

APPENDIX

Signed by Governor
(May 16, 1983)

S.C.R. 79
S.C.R. 96

SEVENTIETH DAY

(Wednesday, May 18, 1983)

The Senate met at 10:00 o'clock a.m., pursuant to adjournment and was called to order by Senator Vale.

The roll was called and the following Senators were present: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Absent-excused: Harris.

A quorum was announced present.

The Reverend Ed Wilder, Trinity United Methodist Church, Austin, offered the invocation as follows:

I've been asked to dedicate this prayer to Marsha Franklin, who will be going into surgery this afternoon at Seton Hospital.

Lord, You have called these people together to do Your work in this political arena. Grant everyone here the wisdom of Solomon, the patience of Job, and the unending compassion of Hosea. Save them from the petty aggravations of slow elevators, broken vending machines, and busy phones. Set their eyes on the far horizon, lighten their load and quicken their step as they move toward establishing a just society. Protect them from the evil one and guide them in all things, I ask in the name of Jesus Christ, Amen.

(President in Chair)

On motion of Senator Mauzy and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

LEAVE OF ABSENCE

Senator Harris was granted leave of absence for today on account of important business on motion of Senator Blake.

MESSAGE FROM THE HOUSE

House Chamber
May 18, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 70, Relating to the classification of the murder of a child in the course of committing aggravated sexual abuse as a capital offense.

H.B. 350, Relating to the placement of signs outside of the entrance of a polling place.

H.B. 431, Relating to utility charges by a housing authority.

H.B. 434, Relating to adoption of programs by political subdivisions to increase participation by minority business enterprises in contract awards.

H.B. 784, Relating to sick leave for public school teachers.

H.B. 793, Relating to a junior college district branch campus maintenance tax.

H.B. 804, Relating to county and precinct officials and employees who are paid wholly from county funds.

H.B. 1010, Relating to authority of the State Board of Barber Examiners and the Texas Cosmetology Commission to contract with each other for inspection and enforcement purposes.

H.B. 1017, Relating to the selection and duties of the Texas Cultural Awards Committee.

H.B. 1023, Relating to issuance, extension, or renewal of permits for certain solid waste facilities used for or to be used for processing, storing, or disposing of hazardous waste.

H.B. 1168, Relating to the requirement that smoke detectors be installed in the state capitol.

H.B. 1206, Relating to monetary limits on state liability for certain claims against officers and supervisory employees of the Texas Department of Corrections and the Texas Youth Council.

H.B. 1263, Relating to the powers and status of the Tribal Councils and tribal businesses of the Alabama-Coushatta and the Tigua Indian Tribes.

H.B. 1321, Relating to penalties for the violation of shrimping laws.

H.B. 1447, Relating to the delivery of notice to a property owner under the Property Tax Code.

H.B. 1732, Relating to the establishment of a temporary emergency relief program in certain communities.

H.B. 1959, Relating to the Development Corporation Act of 1979.

H.B. 1969, Relating to investment securities.

H.B. 2031, Relating to the registration and certification of persons engaged in the appraisal of property for purposes of ad valorem taxation and in the assessment and collection of ad valorem taxes.

H.B. 2054, Relating to the theft of certain equipment, resources, and products from commercial or sports fishing boats or from water.

H.B. 2058, Relating to court-ordered commitment of a drug-dependent person.

H.B. 2375, Relating to benefits for emergency medical personnel, peace officers, and fire fighters who are exposed to contagious diseases in the course of their employment.

H.B. 2380, Relating to the creation of a County Court at Law of Cherokee County.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

CO-AUTHOR OF SENATE BILL 1357

On motion of Senator Truan and by unanimous consent, Senator Henderson will be shown as Co-author of S.B. 1357.

REPORTS OF STANDING COMMITTEES

Senator Jones submitted the following report for the Committee on Finance:

H.B. 1308
H.B. 1500
H.B. 1130
H.B. 1748
H.B. 1409
C.S.S.B. 585 (Read first time)
C.S.H.B. 1836 (Read first time)

Senator Traeger submitted the following report for the Committee on Intergovernmental Relations:

H.B. 1019
S.B. 569 (Amended)
H.B. 399
H.B. 555
S.B. 1408 (Amended)
S.B. 1426
S.B. 1427
S.B. 1379
S.B. 1395
H.B. 2301
S.B. 1418
H.B. 359
S.B. 1406
H.B. 1254
H.B. 2314
H.B. 25
S.B. 1375
H.B. 1707
H.B. 2228
H.B. 430
C.S.H.B. 2371 (Read first time)
C.S.S.B. 1409 (Read first time)
C.S.S.B. 851 (Read first time)
C.S.H.B. 1473 (Read first time)

Senator Blake submitted the following report for the Committee on Administration:

H.C.R. 137
S.R. 565
S.C.R. 92

S.C.R. 107 (Amended)
S.C.R. 109
H.C.R. 118
H.C.R. 121
H.C.R. 134
H.C.R. 146
H.C.R. 147
H.C.R. 149 (Amended)
H.C.R. 154
S.C.R. 117
H.C.R. 105
S.C.R. 120
C.S.S.C.R. 100 (Read first time)

Senator Mauzy submitted the following report for the Committee on Jurisprudence:

H.B. 521
H.B. 423
C.S.S.B. 1081 (Read first time)
S.B. 1028
S.B. 404
S.B. 233 (Amended)
C.S.S.B. 755 (Read first time)
H.B. 747
H.B. 1741
H.B. 450
H.B. 1606
H.B. 559
H.B. 1068
H.B. 1507
H.B. 1677
H.B. 2245
H.B. 1212 (Amended)
H.B. 861

Senator Parker submitted the following report for the Committee on Education:

H.B. 827
H.B. 644
H.B. 1336
H.B. 1708
H.B. 100
H.B. 2116
H.B. 723
H.B. 2102
H.B. 1245

Senator Howard submitted the following report for the Subcommittee on Nominations:

We, your Subcommittee on Nominations, to which were referred the attached appointments, have had same under consideration, and beg to report them back to the Senate for final consideration.

To be a Member of the TEXAS ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS: Mayor Ronald Mullen, Travis County.

To be Members of the BOARD OF REGENTS, STEPHEN F. AUSTIN STATE UNIVERSITY: Luke S. Honea, Hardin County; Ms. Willia B. Murphy, Houston County; Phil Simpson, Dallas County.

To be JUDGE, CRIMINAL DISTRICT COURT NO. 2, TARRANT COUNTY: L. Clifford Davis, Tarrant County.

To be JUDGE, 334th JUDICIAL DISTRICT, HARRIS COUNTY: Judge Jack I. Pickren, Harris County.

To be JUDGE, 333rd JUDICIAL DISTRICT, HARRIS COUNTY: Judge Davie L. Wilson, Harris County.

To be a Member of the STATE BOARD OF VOCATIONAL NURSE EXAMINERS: Jeff D. Sanders, Uvalde County.

To be PECOS RIVER COMPACT COMMISSIONER: Billy L. Moody, Pecos County.

To be Members of the BOARD OF DIRECTORS, LAVACA-NAVIDAD RIVER AUTHORITY: Cecil Don Fenner, Jackson County; Carl W. Swenson, Jackson County; Hans R. Wittenburg, Jackson County.

To be Members of the TEXAS TURNPIKE AUTHORITY: R. J. (Dick) Lindley, Jr., Harris County; C. C. Smitherman, Harris County.

BILLS ADDED TO LOCAL AND UNCONTESTED BILLS CALENDAR

On motion of Senator Blake and by unanimous consent, the following bills were added to the list of bills scheduled to be considered on the Local and Uncontested Bills Calendar tomorrow:

S.B. 1379

S.B. 1395

S.B. 1426

S.B. 1427

H.B. 2301

S.B. 1418

BILLS AND RESOLUTIONS ORDERED NOT PRINTED

On motion of Senator Blake and by unanimous consent, the following bills and resolutions were ordered not printed:

S.B. 1379

S.B. 1395

S.B. 1418

S.B. 1426

S.B. 1427

H.B. 2301

H.B. 1473

S.C.R. 92

S.C.R. 107

S.C.R. 109

H.C.R. 118

H.C.R. 121

H.C.R. 134

H.C.R. 146

H.C.R. 147

H.C.R. 149

H.C.R. 154**S.C.R. 117****H.C.R. 105****S.C.R. 120****ESCORT COMMITTEE APPOINTED**

The President announced the appointment of the following as a Committee to Escort Governor Mark White to the Senate Chamber: Senators Doggett, Edwards, Vale, Caperton and Brooks.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was referred to the Committee on State Affairs, Subcommittee on Nominations:

Austin, Texas

May 17, 1983

TO THE SENATE OF THE SIXTY-EIGHTH LEGISLATURE, REGULAR SESSION:

I ask the advice, consent and confirmation of the Senate with respect to the following appointments:

TO BE A MEMBER OF THE TEXAS COASTAL AND MARINE COUNCIL:

For a term to expire June 30, 1983:

JEANNETTE KOWIS

12802 7th Street

Alta Loma, Texas 77510

(Mrs. Kowis is replacing the Honorable Pike Powers of Austin, Travis County, Texas, who resigned.)

May 18, 1983

TO BE A MEMBER OF THE CREDIT UNION COMMISSION:

For a term to expire February 15, 1985:

ADA WILLIAMS

1636 Indian Summer Trail

Dallas, Texas 75241

(Mrs. Williams is replacing Mrs. Velma Brooks of Dallas, Dallas County, Texas, whose appointment was not confirmed by the Senate.)

TO BE A MEMBER OF THE TEXAS TURNPIKE AUTHORITY:

For a term to expire February 15, 1989:

ROYCE B. WEST

7318 Oakmore

Dallas, Texas 75249

(Mr. West is replacing Mr. George W. Hawkes of Arlington, Tarrant County, Texas, whose term expired.)

TO BE A MEMBER OF THE TEXAS BOARD OF HEALTH:

For a term to expire February 1, 1989:

DR. BARRY D. CUNNINGHAM

Route 2, Box 21C

Round Rock, Texas 78664

(Dr. Cunningham is replacing Dr. Francis A. Conley of Austin, Travis County, Texas, whose term expired.)

TO BE MEMBERS OF THE STATE BOARD OF NURSE EXAMINERS:

For a term to expire January 31, 1989:

MARY ELIZABETH JACKSON

Route 1, Box 291F

Tyler, Texas 75708

(Mrs. Jackson is replacing Mrs. Peggy L. Brown of Houston, Harris County, Texas, whose term expired.)

For a term to expire January 31, 1989:

MARY VIRGINIA JACOBS

109 Oak Ridge Drive

Yoakum, Texas 77995

(Mrs. Jacobs is being reappointed.)

For a term to expire January 31, 1989:

KAREN G. BARNES-CURE

3021 Oakland Drive

Temple, Texas 76502

(Mrs. Barnes-Cure is replacing Mrs. June Murphy of Tyler, Smith County, Texas, whose term expired.)

Respectfully submitted,

/s/Mark White

Governor of Texas

SENATE BILL 396 WITH HOUSE AMENDMENTS

Senator Farabee called **S.B. 396** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - T. Smith

Substitute the following for **S.B. 396**:

A BILL TO BE ENTITLED**AN ACT**

relating to the establishment of the Board of Pardons and Paroles as a statutory agency and the power of the board to revoke paroles.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 1 and 12, Article 42.12, Code of Criminal Procedure, 1965, are amended to read as follows:

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the [responsible] agency of State government with exclusive authority to determine [recommend determination of] paroles and to further designate the Board of Pardons and Paroles as responsible for the investigation and supervision of persons released on parole. It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the Board of Pardons and Paroles as the agency of government responsible for the program. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of

constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

Sec. 12. (a) The Board of Pardons and Paroles is established as a statutory agency. The Board consists of six members appointed by the Governor with the advice and consent of the senate.

(b) Members of the Board must be resident citizens of this State and must have been residents for a period of not less than two years immediately preceding their appointment. Members hold office for staggered terms of six years. The terms expire on January 31 of odd-numbered years.

(c) If a vacancy occurs, the Governor shall appoint a person to serve the remainder of the unexpired term in the same manner as other appointments.

(d) The Board [Board of Pardons and Paroles created by Article 4, Section 11 of the Constitution of this State,] shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections and[, the conditions of parole and mandatory supervision, [and] may recommend the revocation of [releases to mandatory supervision, paroles, and] conditional pardons by the Governor, and may revoke paroles and releases to mandatory supervision. Keeping the goals of this Act in mind, the Board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

SECTION 2. Section 14A(c), Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

(c) The commissioners shall assist the Board in [recommendations to the Governor on] parole decisions and mandatory supervision revocation decisions. The votes on individual recommendations by the commissioners on parole decisions and mandatory supervision revocation decisions shall be independent and have the same force and effect as votes by the Board. The commissioners may assist the Board in other matters as determined by the Board. A parole panel, as hereinafter provided, may recommend the granting, denying, or revocation of parole, the revocation of mandatory supervision status, and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners shall perform their duties as directed by the board.

SECTION 3. Section 15(a), Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

(a) The Board is authorized to release on parole [, with the approval of the Governor,] any person confined in any penal or correctional institution of this State who is eligible for parole under Subsection (b) of this Section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the Board [, duly adopted and approved by the Governor].

SECTION 4. Section 21(a), Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

(a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the Board in cases of parole or mandatory supervision, or by the Board on order by the Governor in other cases, when there is reason to believe that he has committed an offense against the laws of this State or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was released. Pending

hearing, as hereinafter provided, upon any charge of parole violation or violation of the conditions of mandatory supervision, the prisoner shall remain incarcerated.

SECTION 5. Section 22, Article 42.12, Code of Criminal Procedure, 1965, is amended to read as follows:

Sec. 22. Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board or its designee under such rules and regulations as the Board may adopt; providing, however, said hearing shall be a public hearing and shall be held within ninety days of the date of arrest under a warrant issued by the Board of Pardons and Paroles or the Governor and at a time and place set by the Board. When the Board has heard the facts, it may recommend to the Governor that the ~~[parole, mandatory supervision, or]~~ conditional pardon be continued, or revoked, or modified, or it may continue, revoke, or modify the parole or mandatory supervision, in any manner warranted by the evidence [in any manner the evidence may warrant]. When ~~[the Governor revokes]~~ a person's parole, mandatory supervision, or conditional pardon is revoked, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his release to the date of revocation. When a warrant is issued by the Board of Pardons and Paroles or the Governor charging a violation of release conditions, the sentence time credit shall be suspended until a determination is made by the Board of Pardons and Paroles or the Governor in such case and such suspended time credit may be re-instated by the Board of Pardons and Paroles should such parole, mandatory supervision, or conditional pardon be continued.

SECTION 6. (a) To fill the three new positions on the Board of Pardons and Paroles created by this Act, the governor shall appoint one person to a term expiring January 1, 1985, one to a term expiring January 1, 1987, and one to a term expiring January 1, 1989.

(b) Members of the Board of Pardons and Paroles who are in office on the effective date of this Act serve the remainder of the term to which they are appointed.

SECTION 7. This Act takes effect on adoption of the constitutional amendment proposed by S.J.R No. 13, Acts of the 68th Legislature, Regular Session, 1983. If that amendment is not adopted, this Act has no effect.

SECTION 8. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - T. Smith

Amend C.S.S.B. 396 as follows:

1. On page 5, line 24, strike the date, "January 1, 1985" and insert the date "January 31, 1985".
2. On page 5, line 25, strike the date, "January 1, 1987" and insert the date "January 31, 1987".
3. On page 5, lines 25 and 26, strike the date, "January 1, 1989" and insert the date "January 31, 1989".

The amendments were read.

Senator Farabee moved to concur in the House amendments.

The motion prevailed.

SENATE BILLS ON FIRST READING

On motion of Senator Uribe and by unanimous consent, the following bills were introduced, read first time and referred to the Committee indicated:

S.B. 1428 by Uribe Intergovernmental Relations
Relating to the validation of notes, refunding bonds, and other acts and proceedings of certain cities and towns.

S.B. 1429 by Sharp Intergovernmental Relations
Relating to the relinquishment and release of all conditions of use, encumbrances, easements, requirements, reservations, trusts and limitations, concerning certain submerged land in Calhoun County, Texas, already conveyed to City of Port Lavaca, Texas by Patent dated September 29, 1921 of record in Volume 11, Page 517, Deed Records of Calhoun County, Texas.

HOUSE BILLS ON FIRST READING

The following bills received from the House were read the first time and referred to the Committee indicated:

H.B. 306, To Committee on State Affairs.
H.B. 1186, To Committee on Jurisprudence.
H.B. 1726, To Committee on Health and Human Resources.
H.B. 1732, To Committee on Health and Human Resources.
H.B. 70, To Committee on Jurisprudence.
H.B. 350, To Committee on State Affairs.
H.B. 431, To Committee on Intergovernmental Relations.
H.B. 434, To Committee on Intergovernmental Relations.
H.B. 784, To Committee on Education.
H.B. 793, To Committee on Education.
H.B. 804, To Committee on Intergovernmental Relations.
H.B. 1010, To Committee on Economic Development.
H.B. 1017, To Committee on State Affairs.
H.B. 1023, To Committee on Natural Resources.
H.B. 1168, To Committee on State Affairs.
H.B. 1206, To Committee on State Affairs.
H.B. 1263, To Committee on State Affairs.
H.B. 1321, To Committee on Natural Resources.
H.B. 1447, To Committee on Finance.
H.B. 1959, To Committee on Economic Development.
H.B. 1969, To Committee on Economic Development.
H.B. 2031, To Committee on Finance.
H.B. 2054, To Committee on Natural Resources.
H.B. 2058, To Committee on Jurisprudence.
H.B. 2375, To Committee on Intergovernmental Relations.
H.B. 2380, To Committee on Intergovernmental Relations.

SENATE BILL 232 WITH HOUSE AMENDMENTS

Senator Caperton called **S.B. 232** from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Bomer

Substitute the following for **S.B. 232**:

**A BILL TO BE ENTITLED
AN ACT**

relating to the continuation of the Public Utility Commission of Texas and the regulation of utilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes) is amended to read as follows:

**"ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND
DEFINITIONS**

"Section 1. This Act may be referred to as the 'Public Utility Regulatory Act.'

"Section 2. This Act is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that public utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations and services are regulated by public agencies, with the objective that such regulation shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

"Section 3. (a) The term 'person,' when used in this Act, includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations, as herein defined.

"(b) The term 'municipality,' when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

"(c) The term 'public utility' or 'utility,' when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation or a water supply or sewer service corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

"(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ('electric utilities' hereinafter) provided, however, that this definition shall not be construed to apply to or include a qualifying small power producer or qualifying cogenerator, as defined in Sections 3(17)(D) and 3(18)(C) of the Federal Power Act, as amended (16 U.S.C. Sections 796(17)(D) and 796(18)(C));

"(2) (A) the conveyance, transmission, or reception of communications over a telephone system as a dominant carrier as hereinafter defined ('telecommunications utilities' hereinafter); provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system or the manufacture, distribution, installation, or maintenance of customer premise communications equipment and accessories; and provided further that nothing in this Act shall be construed to apply to telegraph services, ~~[services of specialized communications common carriers not providing local exchange telephone service;]~~ television stations, radio stations, community antenna television services, or radio-telephone services that may be authorized under the Public Mobile Radio Services ~~[Domestic Public Land Mobile Radio Service or Rural Radio Service]~~ rules of the Federal Communications Commission, other than such radio-telephone services provided by wire-line telephone companies under the Domestic Public Land Mobile Radio Service and Rural Radio Service rules of the Federal Communications Commission; and

provided further that specialized communications common carriers, resellers of communications, and other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system who are not dominant carriers are also telecommunications utilities, but the commission's regulatory authority as to them is only as hereinafter defined;

"(B) 'dominant carrier' when used in this Act means (i) a provider of any particular communication service which is provided in whole or in part over a telephone system who as to such service has sufficient market power in a telecommunications market as determined by the commission to enable such provider to control prices in a manner adverse to the public interest for such service in such market; and (ii) any provider of local exchange telephone service within a certificated exchange area as to such service. A telecommunications market shall be statewide until January 1, 1985. After this date the commission may, if it determines that the public interest will be served, establish separate markets within the state. Prior to January 1, 1985, the commission shall hold such hearings and require such evidence as is necessary to carry out the public purpose of this Act and to determine the need and effect of establishing separate markets. Any such provider determined to be a dominant carrier as to a particular telecommunications service in a market shall not be presumed to be a dominant carrier of a different telecommunications service in that market.

"(3) [transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) ('gas utilities' hereinafter) provided that the production, gathering, transportation, or sale of natural gas or synthetic gas under Section 4, Article 6050, Revised Civil Statutes of Texas, 1925, as amended, the distribution or sale of liquified petroleum gas, and the transportation, delivery, or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included.

"[(4)] the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state or a water supply or sewer service corporation. The term 'public utility' or 'utility' shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others. The term 'electric utility' shall not include any person or corporation not otherwise a public utility that owns or operates in this state equipment or facilities for producing, generating, transmitting, distributing, selling, or furnishing electric energy to an electric utility, if the equipment or facilities are used primarily for the production and generation of electric energy for consumption by the person or corporation.

"(d) The term 'YOQ'rate,' when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

"(e) The word 'commission,' when used in this Act, means the Public Utility Commission of Texas, as hereinafter constituted.

"[(f)] The term 'railroad commission,' when used in this Act, means the Railroad Commission of Texas.]

“(g) The term ‘regulatory authority,’ when used in this Act, means, in accordance with the context where it is found, either the commission~~[-the railroad commission]~~ or the governing body of any municipality.

“(h) ‘Affected person’ means any public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a public utility with respect to any service performed by the utility or that desires to enter into competition.

“(i) ‘Affiliated interest’ or ‘affiliate’ means:

“(1) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a public utility;

“(2) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a public utility;

“(3) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a public utility;

“(4) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of five percent of such securities;

“(5) any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

“(6) any person or corporation that the commission ~~[or—railroad commission]~~, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether such power is established through ownership or voting of securities or by any other direct or indirect means; or

“(7) any person or corporation that the commission ~~[or—railroad commission]~~, after notice and hearing determines is actually exercising such substantial influence over the policies and action of the public utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with such public utility within the meaning of this section, even though no one of them alone is so affiliated.

“(j) ‘Allocations’ means, for all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where such items are used for providing public utility service in a municipality, or for a municipality and unincorporated areas.

“(k) ‘Commissioner’ means a member of the Public Utility Commission of Texas.

“(l) ‘Cooperative corporation’ means any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act (Article 1528c, Vernon’s Texas Civil Statutes) or the Electric Cooperative Corporation Act (Article 1528b, Vernon’s Texas Civil Statutes).

“(m) ‘Corporation’ means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in this Act.

“(n) ‘Facilities’ means all the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation,

and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility.

"(o) 'Municipally-owned utility' means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

"(p) 'Order' means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and ratesetting.

"(q) 'Proceeding' means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.

"(r) 'Separation' means, for communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

"(s) 'Service' is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under this Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

"(t) 'Test year' means the most recent 12 months for which operating data for a public utility are available and shall commence with a calendar quarter or a fiscal year quarter.

"(u) 'Water supply or sewer service corporation' means a nonprofit, member-owned corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes).

"(v) 'Lifeline rates' means residential rates that favor persons who have been determined to be financially needy and who are 65 years of age or older or have been determined by the Texas Department of Human Resources or the Texas Rehabilitation Commission to be permanently and totally disabled. The determination of financial need shall be made jointly by the Texas Department of Human Resources and the Texas Rehabilitation Commission.

"Section 4. The Administrative Procedure and Texas Register Act applies to all proceedings under this Act except to the extent inconsistent with this Act.

"ARTICLE II. ORGANIZATION OF COMMISSION; OFFICE OF PUBLIC UTILITY COUNSEL

"Section 5. A commission, to be known as the 'Public Utility Commission of Texas' is hereby created.

It shall consist of three commissioners, who shall be appointed to staggered, six-year terms by the governor, with the advice and consent of two-thirds of the members of the senate present, and who shall have and exercise the jurisdiction and powers herein conferred upon the commission. ~~[Immediately after this Act takes effect, the governor shall, with the advice and consent of the senate, appoint one commissioner whose term shall expire two years after appointment, one commissioner whose term shall expire four years after appointment, and one commissioner whose term shall expire six years after appointment. At the expiration of each of the above named terms, there shall be appointed, in the same manner, one commissioner to hold office for a term of six years.]~~ Each

commissioner shall hold office until his successor is appointed and qualified. At its first meeting following the biennial appointment and qualification of a commissioner, the commission shall elect one of the commissioners chairman. Appointments to the commission shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

"Section 5a. The Public Utility Commission of Texas and the Office of Public Utility Counsel are [is] subject to the Texas Sunset Act, as amended (Article 5429k, Vernon's Texas Civil Statutes); and unless continued in existence as provided by that Act the commission and the Office of Public Utility Counsel are [is] abolished, and this Act expires effective September 1, 1995 [1983].

"Section 6. (a) To be eligible for appointment as a commissioner, a person must be a qualified voter, not less than 30 years of age, a citizen of the United States, and a resident of the State of Texas. No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of \$10,000, or more in a public utility or any affiliated interest. Each commissioner shall qualify for office by taking the oath prescribed for other state officers and shall execute a bond for \$5,000 payable to the state and conditioned on the faithful performance of his duties. A person who is required to register as a lobbyist under Chapter 422, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-9c, Vernon's Texas Civil Statutes), may not serve as a member of the commission or public utility counsel or act as the general counsel to the commission.

"(b) No commissioner or employee of the commission may do any of the following during his period of service with the commission [~~and for two years thereafter~~]:

"(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any public utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous contributions of money, property or services;

"(2) own or control any securities in a public utility or affiliated interest, either directly or indirectly;

"(3) accept any gift, gratuity, or entertainment whatsoever from any public utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any public utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than \$100 shall not constitute a violation of this Act.

"(c) The prohibited activities of this section do not include contracts for public utility products and services or equipment for use of public utility products when a member or employee of the commission is acting as a consumer.

"(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any public utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such public utility or affiliated interest.

"(e) No public utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any public utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any public utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any public utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such public utility or affiliated interest or any such person, corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

"(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a public utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a 'pecuniary interest' includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

"(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

"(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

"(i) No commissioner may accept employment with a public utility or affiliated interest within the commission's jurisdiction for a period of two years after his termination of service with the commission. If a commissioner accepts employment with a firm or business entity providing products or services to a public utility or affiliated interest within the commission's jurisdiction, the commissioner may not be involved directly or indirectly with such transactions for a period of two years after his termination of service with the commission.

"(j) During the time a commissioner or employee of the commission is associated with the commission or at any time after, the commissioner or employee may not represent a person, corporation, or other business entity before the commission or a court in a matter in which the commissioner or employee was personally involved while associated with the commission or a matter that was within the commissioner's or employee's official responsibility while the commissioner or employee was associated with the commission.

"(k) The commission shall require its members and employees to read this section and as often as necessary shall provide information regarding their responsibilities under applicable laws relating to standards of conduct for state officers and employees.

“Section 6A. (a) It is a ground for removal from the commission if a member:

“(1) does not have at the time of appointment the qualifications required by Section 6 of this Act for appointment to the commission; or

“(2) does not maintain during the service on the commission the qualifications required by Section 6 of this Act for appointment to the commission.

“(b) The validity of an action of the commission is not affected by the fact that it was taken when a ground for removal of a member of the commission existed.

“Section 7. Whenever a vacancy in the office of commissioner occurs, it shall be filled in the manner provided herein with respect to the original appointment, except that the governor may make interim appointments to continue until the vacancy can be filled in the manner provided. Any person appointed with the advice and consent of the senate to fill a vacancy shall hold office during the unexpired portion of the term.

“Section 8. (a) The commission shall employ such officers, administrative law judges, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, administrative assistants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. [Pending legislative determination, commission employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.]

“(b) The commission shall employ the following:

“(1) an executive director;

“(2) a director of hearings [public utilities] who has wide experience in utility regulation and rate determination;

“(3) [(2)] a chief engineer who is a registered engineer and an expert in public utility engineering and rate matters;

“(4) [(3)] a chief accountant who is a certified public accountant, experienced in public utility accounting;

“(5) [(4)] a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; [and]

“(6) a director of consumer affairs and public information;

“(7) a director of utility evaluation;

“(8) a director of energy conservation; and

“(9) [(5)] a general counsel.

“(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

“The duties of the general counsel include:

“(1) accumulation of evidence and other information from public utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

“(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

“(3) conduct of investigations of public utilities under the jurisdiction of the commission;

“(4) preparation of proposed changes in the rules of the commission;

“(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

“(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

“(7) protection and representation of the public interest and coordination and direction of the preparation and presentation of evidence from the

commission staff in all cases before the commission as necessary to effect the objectives and purposes stated in this Act and ensure protection of the public interest; and

"(8) such other activities as are reasonably necessary to enable him to perform his duties.

"(d) The commission shall employ administrative law judges to preside at hearings before the commission. An administrative law judge must be a licensed attorney with not less than five years' experience. The administrative law judge shall perform his duties independently from the commission. The commission and parties who may appear before the commission may not communicate with an administrative law judge concerning any issue of fact or law in a contested case that has not been finally decided by the commission, except on notice and opportunity for all parties to participate.

"(e) The executive director or his designee shall develop an intra-agency career ladder program, one part of which shall be the intra-agency posting of all nonentry level positions for at least 10 days before any public posting. The executive director or his designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for commission employees must be based on the system established under this section.

"Section 9. The annual salary of the commissioners shall be determined by the legislature. ~~[Pending legislative determination, the commissioners shall be paid the same salary as members of the Railroad Commission.]~~

"Section 10. The principal office of the commission shall be located in the City of Austin, Texas, and shall be open daily during the usual business hours, Saturdays, Sundays, and legal holidays excepted. The commission shall hold meetings at its office and at such other convenient places in the state as shall be expedient and necessary for the proper performance of its duties.

"Section 11. The commission shall have a seal bearing the following inscription: 'Public Utility Commission of Texas.' The seal shall be affixed to all records and authentications of copies of records and to such other instruments as the commission shall direct. All courts of this state shall take judicial notice of said seal.

"Section 12. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy or disqualification shall prevent the remaining commissioner or commissioners from exercising all the powers of the commission.

"Section 13. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon's Texas Civil Statutes).

"Section 14. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the public utility industry as it considers of general interest.

"(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

“Section 14A. The commission shall prepare information of consumer interest describing the regulatory functions of the commission and describing the commission’s procedures by which consumer complaints are filed with and resolved by the commission. The commission shall make the information available to the general public and appropriate state agencies.

“Section 15. The Attorney General of the State of Texas shall represent the commission in all matters before the state courts, and any court of the United States, and before any federal public utility regulatory commission.

“Section 15A. (a) The independent Office of Public Utility Counsel is hereby established to represent the interests of residential and small commercial consumers. The office shall be organizationally located in the Texas Department of Community Affairs. The Texas Department of Community Affairs shall provide administrative and support services to the office. The office is not subject to the control of the Texas Department of Community Affairs.

“(b) The chief executive of the Office of Public Utility Counsel is the public utility counsel, hereinafter referred to as counsellor. The counsellor is appointed by the governor with the advice and consent of the senate to a two-year term that expires on February 1 of the final year of the term.

“(c) The counsellor may employ such lawyers, economists, engineers, consultants, statisticians, accountants, clerical staff, and other employees as he deems necessary to carry out the provisions of this section. Salaries and necessary expenses shall be fixed by the legislature in the general appropriation act and funded from the assessment imposed by Section 78 of this Act.

“(d) The counsellor shall be a resident of Texas and admitted to the practice of law in this state who possesses the knowledge and experience necessary to practice effectively in utility proceedings.

“(e) During the period of the counsellor’s employment and for a period of two years following the termination of employment, it shall be unlawful for any person employed as counsellor to have a direct or indirect interest in any utility company regulated under the Public Utility Regulatory Act to provide legal services directly or indirectly to or be employed in any capacity by a utility company regulated under the Public Utility Regulatory Act, its parent, or its subsidiary companies, corporations, or cooperatives; but such person may otherwise engage in the private practice of law after the termination of employment as the counsellor.

“(f) The Office of Public Utility Counsel:

“(1) shall assess the impact of utility rate changes and other regulatory actions on residential consumers in the State of Texas and shall be an advocate in its own name of positions most advantageous to a substantial number of such consumers as determined by the counsellor;

“(2) may appear or intervene as a matter of right as a party or otherwise on behalf of residential consumers, as a class, in all proceedings before the commission;

“(3) may appear or intervene as a matter of right as a party or otherwise on behalf of small commercial consumers, as a class, in all proceedings where it is deemed by the counsel that small commercial consumers are in need of representation.

“(4) may initiate or intervene as a matter of right or otherwise appear in any judicial proceedings involving or arising out of any action taken by an administrative agency in a proceeding in which the counsel was authorized to appear;

“(5) may have access as any party, other than staff, to all records gathered by the commission under the authority of Subsection (a) of Section 29 of this Act;

“(6) may obtain discovery of any nonprivileged matter which is relevant to the subject matter involved in any proceeding or petition before the commission;

"(7) may represent individual residential and small commercial consumers with respect to their disputed complaints concerning utility services unresolved before the commission; and

"(8) may recommend legislation to the legislature which in its judgment would positively affect the interests of residential and small commercial consumers.

"(g) Nothing in this section shall be construed as in any way limiting the authority of the commission to represent residential or small commercial consumers.

"(h) The appearance of the Public Counsel in any proceeding in no way precludes the appearance of other parties on behalf of residential ratepayers or small commercial consumers. The Public Counsel shall not be grouped with any other parties.

"ARTICLE III. JURISDICTION

"Section 16. (a) The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, or other actions of the commission.

"(b) The commission shall develop a 10-year statewide electrical energy plan forecasting the need for electric service in the state and determining how this need can best be met. In this plan the commission shall emphasize load management, conservation, and development of alternative energy sources. The commission may require all generating electric utilities to prepare and submit any necessary information in the format required for the development of the plan.

"(c) In the preparation or revision of the plan, the commission shall:

"(1) prepare and distribute a preliminary draft of the plan;

"(2) hold public hearings and consider testimony relating to the preliminary plan; and

"(3) issue a final plan on September 1 of each even-numbered year, to cover the 10-year period beginning on September 1 of that year.

"(d) [Sec. 16A:] The commission shall make and enforce rules to encourage the production of electricity [reasonably required to implement the rules and regulations of the Federal Energy Regulatory Commission pertaining to the production of electric energy] by qualifying cogenerators and qualifying small power producers.

"(e) The commission shall inquire into the management of the business of all public utilities under its jurisdiction, shall keep itself informed as to the manner and method in which the management and business is conducted, and shall obtain from any public utility all necessary information to enable the commission to perform management audits. The commission may audit each utility under the jurisdiction of the commission as frequently as needed, but shall audit each utility at least once every seven years. Six months after any audit, the utility shall report to the commission on the status of the implementation of the recommendations of the audit and shall file subsequent reports at such times as the commission deems appropriate.

"Section 17. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and

reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all electric, water, and sewer utility rates, operations, and services provided by an electric, water, and sewer utility within its city or town limits.

“(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over electric, water, or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality’s original jurisdiction to the commission at a municipal election.

“(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elected to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

“(d) The commission shall have exclusive appellate jurisdiction to review orders or ordinances of such municipalities as provided in this Act.

“(e) The commission shall have exclusive original jurisdiction over electric, water, and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this Act.

“Section 18. (a) It is the policy of this state to protect the public interest in having adequate and efficient telecommunications service available to all citizens of the state at just, fair, and reasonable rates. The legislature finds that the telecommunications industry through technical advancements, federal judicial and administrative actions, and the formulation of new telecommunications enterprises has become and will continue to be in many and growing areas a competitive industry which does not lend itself to traditional public utility regulatory rules, policies, and principles; and that therefore, the public interest requires that new rules, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace. It is the purpose of this section to grant to the commission the authority and the power under this Act to carry out the public policy herein stated.

“(b) Subject to the limitations imposed in this Act, and for the purpose of carrying out the public policy above stated and of regulating rates, operations, and services so that such rates may be just, fair, and reasonable, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over the business and property of all telecommunications utilities in this state. In the exercise of its jurisdiction to regulate the rates, operations, and services of a telecommunications utility providing service in a municipality on the state line adjacent to a municipality in an adjoining state, the commission may cooperate with the utility regulatory commission of the adjoining state or the federal government and may hold joint hearings and make joint investigations with any of those commissions.

“(c) The commission shall only have the following jurisdiction over all specialized communications common carriers, resellers of communications, and

other communications carriers who convey, transmit, or receive communications in whole or in part over a telephone system who are not dominant carriers:

"(1) to require registration as provided in Subsection (d) of this section;

"(2) to conduct such investigations as are necessary to determine the existence, impact, and scope of competition in the telecommunications industry, including identifying dominant carriers and defining the telecommunications market or markets, and in connection therewith may call and hold hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, and other actions of the commission; and

"(3) to require the filing of such reports as the commission may direct from time to time.

"(d) All providers of communications service described in Subsection (c) of this section who are providing such service to the public on the effective date of this Act shall register with the commission within 90 days of the effective date of this Act. All providers of communications service described in Subsection (c) of this section who commence such service to the public thereafter shall register with the commission within 30 days of commencing service. Such registration shall be accomplished by filing with the commission a description of the location and type of service provided, the cost to the public of such service, and such other registration information as the commission may direct.

"[Section 19. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

"[(b) The railroad commission shall have exclusive appellate jurisdiction to review all orders or ordinances of municipalities as provided in this Act. The railroad commission shall have exclusive original jurisdiction over the rates and services of gas utilities distributing natural gas or synthetic natural gas in areas outside the limits of municipalities, and it shall also have exclusive original jurisdiction over the rates and services of gas utilities transmitting, transporting, delivering, or selling natural gas or synthetic natural gas to gas utilities engaged in distributing such gas to the public.

"[(c) The provisions of this Act shall be deemed to be in addition to all existing laws relating to the jurisdiction, power, or authority of the railroad commission over gas utilities and, except as specifically in conflict with this Act, such laws shall not be deemed to be limited hereby. Provisions of this Act applicable to gas utilities within the jurisdiction of the railroad commission shall apply to all such gas utilities, including those that are within the jurisdiction, power, or authority of the railroad commission by virtue of laws other than this Act.]

"Section 20. Nothing in this article shall be construed to confer on the commission [or railroad commission] power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

"ARTICLE IV. MUNICIPALITIES

"Section 21. Nothing in this Act shall be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use

thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission ~~[or railroad commission]~~ by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

“Section 22. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the commission may consider a public utility’s revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas, and may also exercise the powers conferred necessary to give effect to orders under this Act, for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider a public utility’s revenues and return on investment in nonexempt areas. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated utilities for service provided to other areas in Texas.

“Section 23. Any municipality regulating its public utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

“Section 24. (a) The governing body of any municipality participating in or conducting ratemaking proceedings shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation in [on] public utility ratemaking proceedings before the governing body, any regulatory authority, or in court. The [and the] public utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services to the extent found reasonable by the applicable regulatory authority.

“(b) Municipalities shall have standing in all rate and other cases before the commission in which the municipalities have a justiciable interest, subject to the right of the commission to consolidate such municipalities on issues of common interest regarding utilities serving within their corporate limits and shall be entitled to judicial review of orders regarding said proceedings in accordance with Section 69 of this Act.

“Section 25. The commission ~~[or the railroad commission]~~ may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission~~[- the railroad commission,]~~ or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

"Section 26. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission [~~or railroad commission~~].

"(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission [~~or railroad commission~~] through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

"(c) Ratepayers of a municipally owned [~~gas or~~] electric utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally owned [~~gas or~~] electric utility through filing with the commission [~~or railroad commission, as appropriate,~~] petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by such utility outside the municipal limits. For purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer. But no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

"(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission [~~or railroad commission~~] and copies served on all parties to the original rate proceeding.

"(e) The commission [~~or railroad commission~~] shall hear such appeal de novo based on the test year presented to the municipality and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken. In the event that the commission fails to enter its final order: (1) for proceedings in which similar relief has also been concurrently sought from the commission under its original jurisdiction, within 120 days from the date such appeal is perfected or the date upon which final action must be taken in the similar proceedings so filed with the commission whichever shall last occur; or (2) in all other proceedings, within 215 days from the date such appeal is perfected, the schedule of rates proposed by the utility shall be deemed to have been approved by the commission and effective upon the expiration of said applicable period. Any rates, whether temporary or permanent, set by the commission shall be prospective and observed from and after the applicable order of the commission, except interim rate orders necessary to effect uniform system-wide rates.

"ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES AND SERVICES

"Section 27. (a) Every public utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission [~~or railroad commission~~] uniform accounts of all business transacted. The commission [~~or railroad commission~~] may also prescribe forms of books, accounts, records, and memoranda to be kept by such public utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission [~~or railroad commission~~] may be necessary to carry out any of the provisions of this Act. In the case of any public utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission [~~or railroad commission~~]; provided, however, that the commission [~~or railroad commission~~] may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the

federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission [~~or railroad commission~~] for a public utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

“(b) The commission [~~or railroad commission~~] shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility, and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission [~~or railroad commission~~] prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

“(c) Every public utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such public utility, to the extent that such merchandise is not integral to the provision of utility service.

“(d) Every public utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the commission [~~or railroad commission~~], and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

“(e) In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly. Where any portion of the investment tax credit has been retained by a public utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

“(f) For the purposes of this section, ‘public utility’ includes ‘municipally owned utility.’

“Section 28. (a) The commission [~~and the railroad commission~~] shall have the power to:

“(1) require that public utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

“(2) establish forms for all reports;

“(3) determine the time for reports and the frequency with which any reports are to be made;

“(4) require that any reports be made under oath;

“(5) require that a copy of any contract or arrangement between any public utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

“(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

“(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body.

"(b) On the request of the governing body of any municipality, the commission [~~or railroad commission~~] may provide sufficient staff members to advise and consult with such municipality on any pending matter.

"Section 29. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any public utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any public utility in connection with such investigation. The regulatory authority may require, by order or subpoena served on any public utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by that public utility outside the state, or verified copies in lieu thereof if the commission [~~or railroad commission~~] so orders. Any public utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

"(b)(1) A member, agent, or employee of the regulatory authority may enter the premises occupied by a public utility to make inspections, examinations, and tests and to exercise any authority provided by this Act.

"(2) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

"(3) The public utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

"(c) The regulatory authority may inquire into the management and affairs of all public utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

"Section 30. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

"Section 31. It shall be unlawful for any utility to charge, collect, or receive any rate for public utility service or to impose any rule or regulation other than as herein provided.

"Section 32. Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any public utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility.

"Section 33. Every public utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission [~~or railroad commission~~] to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from

the state, except on conditions prescribed by the commission [~~or railroad commission~~].

"Section 34. (a) The regulatory authority shall prescribe regulations governing communications by public utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

"(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the public utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

"Section 35. (a) Every public utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

"(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the public utility or until changed by the regulatory authority as herein provided.

"Section 36. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any public utility and may enter any premises occupied by any public utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the duties aforesaid.

"(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

**“ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY
AUTHORITY**

“Section 37. Subject to the provisions of this Act, the commission [or railroad commission] is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

“Section 38. [(a)] It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. The commission may approve a schedule of lifeline rates for residential users of an electric utility. Any underrecovery of costs from lifeline customers shall be allocated to other residential customers. For ratemaking purposes, the commission [or railroad commission] may treat two or more municipalities served by a public utility as a single class wherever it [the commission or railroad commission] deems such treatment to be appropriate.

~~“[(b) Rates charged or offered to be charged by a gas utility for pipeline-to-pipeline transactions and to transportation, industrial and other similar large volume contract customers, but excluding city gate sales-for-resale to gas distribution utilities, are deemed to be just and reasonable and otherwise to comply with this section and shall be approved by the regulatory authority if:~~

~~“[(1) neither the gas utility nor the customer had an unfair advantage during the negotiations; or~~

~~“[(2) the rates are substantially the same as rates between the gas utility and two or more such customers under the same or similar conditions of service; or~~

~~“[(3) competition does or did exist either with another gas utility, another supplier of natural gas, or with a supplier of an alternative form of energy.~~

~~“[(c) If a complaint is filed with the railroad commission by a transmission pipeline purchaser of gas sold or transported under any such pipeline-to-pipeline or transportation rate, then the provisions of Subsection (b) shall not apply.]~~

“Section 39. (a) In fixing the rates of a public utility the regulatory authority shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn [recover its operating expenses together with] a reasonable return on its invested capital used and useful in rendering service to the public over and above its reasonable and necessary operating expenses.

“(b) In fixing a reasonable return on invested capital, the regulatory authority shall consider, in addition to other applicable factors, efforts to comply with the statewide energy plan, the efforts and achievements of such utility in the conservation of resources, the quality of the utility’s services, the efficiency of the utility’s operations, and the quality of the utility’s management.

“Section 40. [(a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

“[(b)] In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the public utility.

“Section 41. The components of [adjusted value of] invested capital and net income shall be determined according to the following rules:

~~“(a) [Adjusted Value of] Invested Capital. Utility rates shall be based upon the original cost [adjusted value] of property used by and useful to the public utility in providing service including [where necessary to the financial integrity of the utility] construction work in progress at cost as recorded on the books of the utility. The inclusion of construction work in progress is an exceptional form of rate relief to be granted only upon the demonstration by the utility that such inclusion is in the ratepayers’ best interest and is necessary to the financial integrity of the utility. Construction work in progress shall not be included in the rate base for major projects under construction to the extent that such projects have been inefficiently or imprudently planned or managed. Invested capital is [The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority shall have the discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that is,] the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor, less depreciation[, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the public utility to attract new capital in determining a reasonable balance].”~~

“(b) Separations and Allocations. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

“(c) Net Income. By ‘net income’ is meant the total revenues of the public utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

“(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable and necessary for each item or class of items as determined by the commission. Any such finding [of reasonableness] shall include specific findings of the reasonableness and necessity [statements setting forth the cost to the affiliate] of each item or class of items allowed [in question] and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or class of items, or to unaffiliated persons or corporations.

“(2) Income Taxes. If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a public utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate base contribution of the assets to which such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

“(3) Expenses Disallowed. The regulatory authority shall not consider for ratemaking purposes the following expenses:

"(A) legislative advocacy expenses, whether made directly or indirectly, including but not limited to legislative advocacy expenses included in trade association dues;

"(B) payments, except those made under an insurance or risk-sharing arrangement executed before the date of loss, made to cover costs of an accident, equipment failure, or negligence at a utility facility owned by a person or governmental body not selling power inside the State of Texas;

"(C) costs of processing a refund or credit under Subsection (e) of Section 43 of this Act;

"(D) costs incurred by purchasing over-priced services or supplies from affiliates or nonaffiliated companies;

"(E) wasteful expenditures or expenditures not in the public interest;

"(F) excessive executive salaries;

"(G) advertising expenses, except expenses that are determined by the commission to be reasonable and that pertain to conservation, safety, filing requirements, or equipment or specialty services, including long distance telephone services or sales;

"(H) unreasonable legal expenses;

"(I) civil penalties and fines; or

"(J) voluntary contributions to needy ratepayers that are intended to reduce utility costs of the ratepayers.

"The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of any [certain] expenses for ratemaking purposes.

"Section 42. Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

"Section 43. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks prior to the effective date of the proposed change in a newspaper having general circulation in each county containing territory affected by the proposed change, and by mail to such other affected persons as may be required by the regulatory authority's rules and regulations. Provided, however, nothing in this subsection shall apply to a water or sewer utility that, together with all affiliated utilities, has a combined total of:

~~“(1) has] fewer than 150 customers[; and~~

~~“(2) is not a member of a group filing a consolidated tax return; and~~

~~“(3) is not under common control or ownership with another water or sewer utility].~~

“(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35 day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. ‘Major changes’ shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

“(c) Whenever there is filed with the Regulatory Authority any schedule modifying or resulting in a change in any rates then in force, the Regulatory Authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The Regulatory Authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed. In each case involving a major change over which the commission has jurisdiction, the commission shall hold a regional hearing in a place determined by the commission to be appropriate. A regional hearing is not required in a case involving a water, sewer, or member-owned utility, unless the commission determines otherwise. The purpose of a regional hearing is to collect testimony for inclusion in the record of the rate change hearing to be held in Austin.

“(d) Pending the hearing and decision, the local Regulatory Authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 90 [120] days beyond the date on which the schedule of rates would otherwise go into effect and the commission may suspend the operation of the schedule for a period not to exceed 180 days beyond the date on which the schedule would otherwise go into effect. If the Regulatory Authority does not make a final determination concerning any schedule of rates prior to expiration of the period or periods of suspension, [If the Regulatory Authority finds that a longer time will be required for a final determination, the Regulatory Authority may further extend the period for an additional 30 days. If the Regulatory Authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect,] the schedule shall be deemed to have been approved by the Regulatory Authority. This approval is subject to the authority of the Regulatory Authority thereafter to continue a hearing in progress. The Regulatory Authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the Regulatory Authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the Regulatory Authority shall establish a temporary rate. The Regulatory Authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

“(e) If the regulatory authority fails to make its final determination of rates within 150 [90] days from the date that the proposed change otherwise would have

gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

“(f) If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

“(g) A rate or tariff set by the commission may not authorize an automatic adjustment of a rate for, or pass through of, changes in the fuel costs of the utility. Any revision of rates or tariffs to allow recovery of additional fuel costs may be made only upon a public hearing and order of the commission. At such public hearing the commission may consider any costs that are appropriate and in the public interest. Nothing herein shall prohibit the commission, after a hearing, from granting interim relief for fuel cost increases that are the result of unusual or emergency circumstances or conditions. The Regulatory Authority shall allow the full amount of any increases in the cost of purchased electricity which have been accepted by a federal Regulatory Authority or approved after a hearing on wholesale rates by a Texas Regulatory Authority to be recovered as an operating expense by the purchasing utility concurrently with the effective date of such increased cost to the purchasing utility or as soon thereafter as is reasonably practical.

“(h) [(g)] A water or sewer utility exempted in Subsection (a) of this section may change its rates by filing a statement of change with the commission at least 30 days after providing notice of the change to its customers. The changed rates may be put into effect on the filing of the statement of change. At the request of one-tenth of the customers of the utility within 60 days after the day the rates are put into effect, the commission may hold a hearing, which may be an informal proceeding. On a finding by the commission that the changed rates are not just and reasonable, the commission shall set the utility's rates according to its usual procedure. The utility shall refund or credit against future bills all sums collected since the filing of the statement of change in excess of the rate finally set plus interest at the current rate as finally determined by the commission. No filing for a rate change under this section may be made for a period of six months from the last such filing by the same utility.

“Section 44. Public utility rates for areas not within any municipality shall not exceed without commission [~~or railroad commission~~] approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

“Section 45. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable prejudice or disadvantage. No public utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

“Section 46. No public utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the

utility than that prescribed in the schedule of rates of the public utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

“Section 47. No public utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the public utility, nor may any public utility engage in any other practice that tends to restrict or impair such competition.

“Section 48. No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

“ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

“Section 49. For the purposes of this article only: (a) ‘Retail public utility’ means

any person, corporation, water supply or sewer service corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service.

“(b) [~~‘Public utility’ does not include any person, corporation, municipality, political subdivision or agency, or cooperative corporation under the jurisdiction of the Railroad Commission.~~] For the purposes of this article only, “public utility” includes a water supply or sewer service corporation.

“Section 50. Beginning one year after the effective date of this Act, unless otherwise specified:

“(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

“(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

“Section 51. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

“(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

“(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

“(3) operation, extension, or service in progress on the effective date of this Act.

“(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for

transmitting public utility services from existing facilities to customers of retail utility service.

"Section 52. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

"(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

"(c) Each applicant for a certificate shall file with the commission such evidence as is required by the commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

"Section 53. On application made to the commission within six months after the effective date of this Act, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility actually providing service to any geographical area on the effective date of this Act, or to any person or corporation actively engaged on the effective date of this Act in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

"Section 54. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

"(b) Except for certificates for prior operations granted under Section 53, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

"(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

"(d) In addition to the requirements of this section, an electric utility applying for certificate of convenience and necessity for a new generating plant must first file a notice of intent to file an application for certification.

"(1) The notice of intent shall set out alternative methods considered to help meet the electrical needs, related electrical facilities, and the advantages and disadvantages of the alternatives. In addition, the notice shall indicate compatibility with the most recent long-term forecast provided in this Act.

"(2) The commission shall conduct a hearing on the notice of intent to determine the appropriateness of the proposed generating plant as compared to the alternatives and shall issue a report on its findings. In conjunction with the issuance of the report, the commission shall render a decision approving or disapproving the notice. Such decision shall be rendered within 180 days from the date of filing the notice of intent.

“(e) On approval of the notice of intent, a utility may apply for certification for a generating plant, site, and site facilities no later than 12 months before construction is to commence.”

“(1) The application for certification shall contain such information as the commission may require to justify the proposed generating plant, site, and site facilities and to allow a determination showing compatibility with the most recent forecast.”

“(2) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis if the commission finds that the proposed new plant is required under the service area forecast, that it is the best and most economical choice of technology for that service area as compatible with the commission’s forecast, and that conservation and alternative energy sources cannot meet the need.”

“Section 55. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

“(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the public utility 30 days’ notice and specifying the new location for the facilities along the right-of-way of the street or streets.

“(c) This section may not be construed as limiting the power of cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Section 182.025, Tax Code [Article 11.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended].

“Section 56. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

“Section 57. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

“Section 58. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

“(b) Unless the commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate, shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

- "(1) nonpayment of charges;
- "(2) nonuse; or
- "(3) other similar reasons in the usual course of business.

"(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to such conditions, restrictions, and limitations as the commission shall prescribe.

"Section 59. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

"Section 60. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

"Section 61. After notice and hearing, the commission may:

"(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

"(2) order two or more public utilities to establish specified facilities for the interconnecting service; and

"(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided.

"Section 62. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

"(b) When the certificate of any public utility is revoked or amended, the commission may require one or more public utilities to provide service in the area in question.

"(c) From the effective date of Subsections (c), (d), and (e) of this section until September 1, 1982, any person or corporation, including subsidiaries of a common parent corporation, owning a tract of land with no or minimal existing telecommunications services situated within the certified service areas of two or more telecommunications utilities as defined in Section 3(c)(2)(a), of this Act, as amended, may upon application in writing to the commission request the commission after notice and hearing to amend the certificates of the telecommunications utilities and to provide that the service to such tract will be furnished by the utility designated by the commission.

"(d) In determining whether the certified service areas of the telecommunications utilities should be amended pursuant to an application under Subsection (c) of this section, the commission shall take into consideration the adequacy and quality of existing service, the need for existing service, the probable improvement of service or lowering of costs to consumers in such areas resulting from the requested amendments of certification, the particular needs of the applicant for service, including specialized or unusual services, and any duplication of facilities which would result from failure to amend the certificates.

"(e) The commission may amend the certificates of telecommunications utilities as requested under Subsection (c) of this section if it finds such amendment to be proper after consideration of the factors listed in Subsection (d) of this section.

“ARTICLE VIII. SALE OF PROPERTY AND MERGERS

“Section 63. No public utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 or merge or consolidate with another public utility operating in this state unless the public utility reports such transaction to the commission ~~[or railroad commission]~~ within a reasonable time. All transactions involving the sale of 50 percent or more of the stock of a public utility shall also be reported to the commission within a reasonable time. On the filing of a report with the commission ~~[or railroad commission]~~, the commission ~~[or railroad commission]~~ shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission ~~[or railroad commission]~~ shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission ~~[or railroad commission]~~ finds that such transactions are not in the public interest, the commission ~~[or railroad commission]~~ shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the public utility by construction.

“Section 64. No public utility may purchase voting stock in another public utility doing business in Texas, unless the utility reports such purchase to the commission ~~[or railroad commission]~~.

“Section 65. No public utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports the transaction to the commission ~~[or railroad commission]~~ within a reasonable time.

~~“[Section 66. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.]”~~

“ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

“Section 67. The commission ~~[or railroad commission]~~ shall have jurisdiction over

affiliated interests having transactions with public utilities under the jurisdiction of the commission ~~[or railroad commission]~~ to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions.

“Section 68. The commission ~~[or railroad commission]~~ may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any public utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

“ARTICLE X. JUDICIAL REVIEW

“Section 69. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The commission shall be a party defendant in any such proceeding represented by the attorney general. ~~[The issue of confiscation shall be determined by a preponderance of the evidence.]~~

“Section 70. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys’ fees to be fixed by the court. On a

finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

"ARTICLE XI. VIOLATIONS AND ENFORCEMENT

"Section 71. Whenever it appears to the commission [~~or railroad commission~~] that any public utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission [~~or railroad commission~~] entered or adopted under the provisions of this Act, or that any public utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or order, the attorney general on request of the commission [~~or railroad commission~~], in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission [~~or railroad commission~~] against such public utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

"Section 71A. (a) At the request of the commission, the attorney general shall bring suit for the appointment of a receiver to collect the assets and carry on the business of a water or sewer utility that violates a final order of the commission or allows any property owned or controlled by it to be used in violation of a final order of the commission.

"(b) The court shall appoint a receiver if such appointment is necessary to guarantee the collection of assessments, fees, penalties, or interest, to guarantee continued service to the customers of the utility, or to prevent continued or repeated violation of the final order.

"(c) The receiver shall execute a bond to assure the proper performance of the receiver's duties in an amount to be set by the court.

"(d) After appointment and execution of bond the receiver shall take possession of the assets of the utility specified by the court. Until discharged by the court, the receiver shall perform the duties that the court directs to preserve the assets and carry on the business of the utility and shall strictly observe the final order involved.

"(e) Upon a showing of good cause by the utility, the court may dissolve the receivership and order the assets and control of the business returned to the utility.

"Section 71B. The receiver may, subject to the approval of the court and after giving notice to all interested parties, sell or otherwise dispose of real or personal property, or any part thereof, of a water or sewer utility against which a proceeding has been brought under this article for the purpose of paying for the costs incurred in the operation of the receivership. Said costs shall include but are not limited to the payment of fees to the receiver for his services; payment of fees to attorneys, accountants, engineers, or any other person or entity which provides goods or services necessary to the operation of the receivership; payment of costs incurred in ensuring any property owned or controlled by a water or sewer utility is not used in violation of a final order of the commission.

"Section 72. (a) Any public utility, water supply or sewer service corporation, or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission [~~or railroad commission~~] or decree or judgment of a court, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each offense.

"(b) A public utility, water supply or sewer service corporation, or affiliated interest commits a separate offense each day it continues to violate the provisions of Subsection (a) of this section.

“(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission [~~or railroad commission~~], in a court of competent jurisdiction to recover the penalty under this section.

“Section 73. (a) Any member of the commission, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

“(b) Any person, other than an officer or director of a public utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of \$500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

“(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

“Section 74. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

“(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any other corporation or person.

“Section 75. If any person fails to comply with any lawful order of the commission [~~or railroad commission~~] or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission [~~or railroad commission~~] may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

“Section 76. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission [~~or railroad commission~~] and paid by the commission [~~or railroad commission~~] to the state treasury to be placed in the general revenue fund.

“Section 77. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

“ARTICLE XII. COMMISSION FINANCING

“Section 78. An assessment is hereby imposed upon each public utility within the commission’s jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund the commission and the office of public utility counsel [operation].

“Section 79. All assessments shall be due on August 31 of each year. Any public utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and penalty due.

“Section 80. All fees, penalties, and interest paid under the provisions of Sections 78 and 79 of this article shall be collected by the comptroller of public

accounts and paid into the general revenue fund. The commission shall notify the comptroller of public accounts of any adjustment of the assessment imposed in Section 78 when made.

"Section 81. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

"Section 82. The commission shall keep such accounting records as required by the state auditor [and shall be subject to periodic audit]. The state auditor shall audit the financial transactions of the commission during each fiscal year.

"ARTICLE XIII. MISCELLANEOUS PROVISIONS

"Section 83. (a) Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority. The commission shall keep an information file about each complaint filed with it relating to a utility. The commission shall retain the file for a reasonable period.

"(b) If a written complaint is filed with the commission relating to a utility, the commission, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

"Section 84. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney. Intervenor grouping is not permitted unless the regulatory authority specifically finds that grouping is necessary to the conduct of the case. All parties to any contested case are entitled to timely written notice of the hearing.

"Section 85. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

"Section 87. (a) The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on January 1, 1976, except as provided in Subsection (b) of this section.

"(b) The regulatory authority shall assume jurisdiction over rates and service of public utilities on September 1, 1976.

"Section 87A. (a) The provisions of this section apply notwithstanding any other provision of this Act.

"(b) Water and sewer utility property in service which was acquired from an affiliate or developer prior to September 1, 1976, included by the utility in its rate base shall be included in all ratemaking formulae and at the installed cost of the property rather than the price set between the entities. Unless the funds for this property are provided by explicit customer agreements, the property shall be considered invested capital and shall not be considered contributions in aid of construction or customer-contributed capital.

"(c) Depreciation expense included in cost of service shall include depreciation on all currently used, depreciable utility property owned by the utility.

"Section 88. The commission is hereby authorized to receive funds for and to administer the following programs:

"(1) programs established under Part D of Title II of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.), also known as the State Energy Conservation Plan;

"(2) programs established under Part G of Title III of the Energy Policy and Conservation Act (42 U.S.C. 6371 et seq.), also known as the Institutional Conservation Program;

“(3) programs established under the National Energy Extension Service Act (42 U.S.C. 7001 et seq.); and

“(4) programs established under the Energy Research and Development Administration Appropriation Authorization (42 U.S.C. 5907 et seq.) also known as Appropriate Technology Small Grants Program (Pub. No. 95-39, Sec. 112).

“Section 89. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such construction preserves the validity of this Act and its provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

“Section 90. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon’s Texas Civil Statutes) and all other laws and parts of laws in conflict with this Act are repealed effective September 1, 1976.

“(b) All rules and regulations promulgated by regulatory authorities in the exercise of their jurisdiction over public utilities, as defined in this Act, shall remain in effect until such time as the commission or railroad commission promulgates provisions applicable to the exercise of the commission’s or railroad commission’s jurisdiction over public utilities.

“Section 91. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.”

SECTION 2. This Act applies only to a proceeding in which the statement of intent or application is filed on or after the effective date of this Act. A proceeding in which the statement of intent or application is filed before the effective date of this Act is governed by the law in effect when the statement of intent or application was filed, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect September 1, 1983.

SECTION 4. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Floor Amendment No. 1 - Bomer

Amend Section 24(b) of C.S.S.B. 232 on page 32 by striking the language on lines 14 through 16 and substitute in lieu thereof the following:

“(b) Municipalities shall have standing in all cases before the commission subject to the right of the commission to”

Floor Amendment No. 2 - Bomer

Amend C.S.S.B. 232 by adding subsection (i) on page 23, line 20 to read as follows:

(i) There shall only be one Office of Public Utility Counsel even though that office may be referenced in one or more Acts of the 68th Legislature.

Floor Amendment No. 3 - Ragsdale

Amend C.S.S.B. 232, SECTION 1, page 19, line 3 by adding a subdivision (f) to proposed Article II, Section 8 to read as follows:

(f) The executive director or his/her designee shall prepare and maintain a written plan to assure implementation of a program of equal employment

opportunity whereby all personnel transactions are made without regard to race, color, disability, sex, religion, age or national origin. The plans shall include:

(1) a comprehensive analysis of all the agency's workforce by race, sex, ethnic origin, class of position, and salary or wage";

(2) plans for recruitment, evaluation, selection, appointment, training, promotion and other personnel policies;

(3) steps reasonably designed to overcome any identified underutilization of minorities and women in the agency's workforce; and

(4) objectives and goals, timetables for the achievement of the objectives and goals, and assignments of responsibility for their achievement.

The plans shall be filed with the Governor's office within sixty days of the effective date of this Act, cover an annual period and be updated at least annually. Progress reports shall be submitted to the Governor's office within thirty days of November 1 and April 1 of each year and shall include the steps the agency has taken within the reporting period to comply with these requirements.

Floor Amendment No. 4 - Wilson

Amend C.S.S.B. 232 on page 75, line 18 by renumbering Section 91 as Section 92 and inserting a new section 91 to read as follows:

Section 91. The Public Utility Commission is authorized to establish criteria and guidelines with the utility industry relating to procedures employed by the industry in terminating services to the elderly and disabled.

Floor Amendment No. 5 - Denton

Amend C.S.S.B. 232 on page 53, line 7, by deleting "may" and substituting "shall".

Floor Amendment No. 6 - Green

Amend C.S.S.B. 232 on page 67, line 27, insert the following at the end of the paragraph:

In addition to any implied authority granted by this act, whenever it appears to the local regulatory authority that a water and sewer utility or any other person or corporation subject to regulation under the provisions of the Act dealing with water and sewer facilities is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission entered or adopted under the provisions of this Act or any local ordinance consistent with this Act and the rules and regulations of the commission, or that any water and sewer utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule, regulation, or local ordinance, the municipality in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction against such water and sewer utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation order, or local ordinance."

Floor Amendment No. 7 - Green

Amend Section 24(b) on page 32 by adding the following:

"(b) Municipalities shall have standing in all cases before the commission, provided that the commission shall determine standing in cases involving retail service area disputes involving two or more utilities, subject to the right of the commission to consolidate such municipalities on issues of common interest regarding utilities serving within their corporate limits and shall be entitled to judicial review of orders regarding said proceedings in accordance with Section 69 of this Act."

The amendments were read.

Senator Caperton moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 232 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Caperton, Chairman; Farabee, Doggett, Parmer and Howard.

(Senator Traeger in Chair)

SENATE BILL 911 WITH HOUSE AMENDMENT

Senator Farabee called S.B. 911 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Peveto

Amend S.B. 911 as follows:

On page 4, line 12, by striking "establish", and substituting "recommend". On page 9, line 19, by striking "which address" and substituting "upon consideration of", and by striking "established" and substituting "recommended".

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 727 WITH HOUSE AMENDMENT

Senator Caperton called S.B. 727 from the President's table for consideration of the House amendment to the bill.

The Presiding Officer laid the bill and the House amendment before the Senate.

Committee Amendment No. 1 - Keller

Substitute the following for S.B. 727:

A BILL TO BE ENTITLED AN ACT

relating to measures designed to reduce the prison population during periods of emergency overcrowding.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 108, Revised Statutes, is amended by adding Article 6184-0 to read as follows:

Art. 6184-0. TEXAS PRISON MANAGEMENT ACT

Sec. 1. (a) In this article:

(1) "Board" means the Board of Pardons and Paroles.

(2) "Capacity" means the greatest density of prison inmates in relation to space available for inmate housing in the Texas Department of Corrections that

is in compliance with standards for prison population established by the Texas Board of Corrections.

(3) "Department" means the Texas Department of Corrections.

(4) "Director" means the director of the Texas Department of Corrections.

(b) In calculations of space available for inmate housing made before January 1, 1985, temporary housing may be considered, except that for purposes of the calculations, space available in temporary housing may not exceed the space available in temporary housing that existed on January 1, 1983. In calculations made on and after January 1, 1985, temporary housing may not be considered for purposes of the calculations.

Sec. 2. (a) If the inmate population of the department reaches 94 percent or more of capacity, the director shall immediately notify the governor in writing of that fact. Thereafter, until the inmate population is reduced to less than 94 percent of capacity, the director shall make a weekly written report to the governor stating the extent to which the inmate population is less than, equal to, or in excess of capacity.

(b) If the inmate population of the department reaches 95 percent or more of capacity, the director shall immediately notify the governor in writing of that fact and credit 30 days of administrative good conduct time to any inmate who:

(1) is classified as a trusty or a Class I inmate by the department; and

(2) is not serving a sentence for an offense listed in Section 3f(a)(1), Article 42.12, Code of Criminal Procedure, 1965, or whose judgment does not contain an affirmative finding under Section 3f(a)(2) of that article.

(c) No later than the 30th day after the day of receiving notice from the department that the inmate population of the department has reached 95 percent or more of capacity the governor shall certify that an emergency overcrowding situation exists and shall notify the board of that fact if the governor determines that:

(1) the department's computation of capacity is correct;

(2) the department has taken all administrative actions consistent with applicable state statutes and rules adopted under those statutes to reduce the inmate population to 95 percent or less of capacity;

(3) those administrative actions are not adequate to reduce the inmate population to 95 percent or less of capacity; and

(4) no other means of reducing the inmate population to 95 percent or less of capacity are feasible.

(d) If the board has been notified by the governor that an emergency overcrowding situation exists in the department, the board shall advance by 30 days the parole eligibility and review date of those inmates who are described by Subsection (b) of this section.

(e) If 60 days after the governor has notified the board that an emergency overcrowding situation exists, the situation continues to exist, the board shall advance by an additional 30 days the parole eligibility and review date of those inmates described by Subsection (b) of this section.

(f) If 120 days after the governor has notified the board that an emergency overcrowding situation exists, the situation continues to exist, the governor shall order the director to make another award of good time in the same manner as provided in Subsection (b) of this section. If at that time the governor determines that it is necessary, he may order the board to advance by an additional 30 days the parole review and eligibility date of those inmates who are described by Subsection (b) of this section.

(g) If after the governor declares that an emergency overcrowding situation exists, inmate population is reduced to less than 95 percent of capacity, the governor shall immediately notify the board that the emergency situation no longer exists.

(h) This article does not apply to an emergency overcrowding situation if the situation is the direct result of the destruction of prison facilities by a natural or man-made disaster.

(i) A prisoner released to parole under this section is subject to terms and conditions imposed on parolees released under Article 42.12, Code of Criminal Procedure, 1965.

SECTION 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

The amendment was read.

Senator Caperton moved to concur in the House amendment.

The motion prevailed.

SENATE BILL 1270 WITH HOUSE AMENDMENTS

Senator Farabee called S.B. 1270 from the President's table for consideration of the House amendments to the bill.

The Presiding Officer laid the bill and the House amendments before the Senate.

Committee Amendment No. 1 - Craddick

Amend Section 3 of S.B. 1270 to read as follows:

SECTION 3. Chapter 97, Acts of the 66th Legislature, Regular Session, 1979, is amended by adding Section 3A to read as follows:

"Section 3A. COMPETITIVE BID. If a contract for the purchase of materials, machinery, and other items for use in works, improvements, facilities, plants, equipment, and appliances of the district or for construction involves an expenditure of more than \$25,000, the board shall solicit competitive bids for the contract as provided by Chapter 770, Acts of the 66th Legislature, Regular Session, 1979 (Article 2368a.3, Vernon's Texas Civil Statutes)."

Committee Amendment No. 2 - Craddick

Amend S.B. 1270 on page 5, line 24 by adding the following SECTION 5, and renumbering subsequent sections accordingly:

SECTION 5. This Act does not apply to any matter relating to the location and siting of a sanitary landfill that on the effective date of this Act is involved in litigation or in a proceeding before a state agency, regardless of the outcome of that litigation or proceeding. The litigation or proceeding is governed by Chapter 97, Acts of the 66th Legislature, Regular Session, 1979, as that law existed immediately before the effective date of this Act.

The amendments were read.

Senator Farabee moved to concur in the House amendments.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Santiesteban, Uribe, Whitmire.

Absent-excused: Harris.

SENATE JOINT RESOLUTION 13 WITH HOUSE AMENDMENT

Senator Farabee called S.J.R. 13 from the President's table for consideration of the House amendment to the resolution.

The Presiding Officer laid the resolution and the House amendment before the Senate.

Amendment No. 1 - T. Smith

- Substitute the following for S.J.R. 13:

A JOINT RESOLUTION

proposing a constitutional amendment to establish the Board of Pardons and Paroles as a statutory agency and to give the board the power to revoke paroles.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article IV, Section 11, of the Texas Constitution be amended to read as follows:

Sec. 11. The Legislature shall by law establish a Board of Pardons and Paroles and shall require it to keep record of its actions and the reasons for its actions. The Legislature shall have authority to enact parole laws. ~~[There is hereby created a Board of Pardons and Paroles, to be composed of three members, who shall have been resident citizens of the State of Texas for a period of not less than two years immediately preceding such appointment, each of whom shall hold office for a term of six years, provided that of the members of the first board appointed, one shall serve for two years, one for four years and one for six years from the first day of February, 1937, and they shall cast lots for their respective terms. One member of said Board shall be appointed by the Governor, one member by the Chief Justice of the Supreme Court of the State of Texas, and one member by the presiding Justice of the Court of Criminal Appeals, the appointments of all members of said Board shall be made with the advice and consent of two-thirds of the Senate present. Each vacancy shall be filled by the respective appointing power that theretofore made the appointment to such position and the appointive powers shall have the authority to make recess appointments until the convening of the Senate.]~~

In all criminal cases, except treason and impeachment, the Governor shall have power, after conviction, on the written signed recommendation and advice of the Board of Pardons and Paroles, or a majority thereof, to grant reprieves and commutations of punishment and pardons; and under such rules as the Legislature may prescribe, and upon the written recommendation and advice of a majority of the Board of Pardons and Paroles, he shall have the power to remit fines and forfeitures. The Governor shall have the power to grant one reprieve in any capital case for a period not to exceed thirty (30) days; and he shall have power to revoke [paroles and] conditional pardons. With the advice and consent of the Legislature, he may grant reprieves, commutations of punishment and pardons in cases of treason.

~~[The Legislature shall have power to regulate procedure before the Board of Pardons and Paroles and shall require it to keep record of its actions and the reasons therefor, and shall have authority to enact parole laws.]~~

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 8, 1983. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to change the Board of Pardons and Paroles from a constitutional agency to a statutory agency and to give the board the power to revoke paroles."

The amendment was read.

Senator Farabee moved to concur in the House amendment.

The motion prevailed by the following vote: Yeas 27, Nays 0.

Absent: Santiesteban, Uribe, Whitmire.

Absent-excused: Harris.

(President in Chair)

SENATE BILL 1030 WITH HOUSE AMENDMENT

Senator Williams called S.B. 1030 from the President's table for consideration of the House amendment to the bill.

The President laid the bill and the House amendment before the Senate.
Floor Amendment No. 1 - G. Hill

Amend S.B. 1030 as follows:

In Section 8 delete the name of "Jim Assad" from the list of persons to be the directors of the district and substitute the name "Dan Bitner".

Senator Williams moved to concur in the House amendment.

The motion prevailed.

GUESTS OF SENATE

The Honorable Mark White, Governor of the State of Texas, accompanied by his party, was announced by the Doorkeeper of the Senate.

The Governor and his party was escorted to the President's Rostrum by Senators Doggett, Edwards, Vale, Caperton and Brooks.

The President introduced His Excellency Mark White, who presented Admiral Bobby Inman, stating, "I am delighted today to be in this Chamber to introduce to you an individual who I believe will describe what is to me one of the most exciting opportunities that we have in this state; to see Texas bridge that gap between a time of reliance on oil and gas technology to high technology. The potential, I think, is enormous and I'm delighted to present to you the Chairman of the Board of MCC Corporation, Admiral Bobby Inman."

Admiral Inman then addressed the Senate as follows: "When I was graduated with a B.A. over on that other hill on 3 June, 1950, the thought that I might show back up in Austin to be a resident, or even more that I might have the honor to address this group never crossed my mind.

A Korean War draft board inspired me to go off to officer candidate school and led me off to a career of 31 years looking at the outside world; looking at the problems this country faces in trying to deal with friends and potential foes alike. And over those years, particularly the last 20 years, I spent most of my time in the world of U.S. intelligence community and focusing on the Soviet Union and its steady growth, and became very alarmed in the later years that most of the discussion I saw in this country tended to be focused on when we had any public debate about defense on nuclear weapons and war heads and megatonage that I think by and large turns the public off, leaves them confused. But more importantly, obscures the fact that the Soviets have built over these last 20 years a great military capability of conventional forces that can be moved anywhere in the world.

A new generation of leaders is going to come along in the next 10 years, and their attitudes about using that power may be greatly different. They may be far less cautious than this past leadership has been.

Well, one thing we know for sure, they will not be able to compete economically and they're going to be looking for opportunities to exercise their great power status. That puts a great premium, it seems to me, on how we keep together our alliances...because these next 15 to 20 years are going to see us in extremely intense economic competition for raw materials, for resources, for markets. Much of that is going to take place within the countries of the western alliance...and holding together alliances in that process is not going to be an easy problem.

But, as with most issues, leadership offers us the greatest prospect. And when I was approached to take over and put together and lead a new corporation, which for the first time in this country would pool research and development resources from competitors, where they knew they would go to the marketplace in competition with one another, and they found that hard to do. But to keep us in the leadership role economically in the world, they were persuaded it needed to be done.

We spent three months looking for where we ought to put this organization. Where would it find the climate in which it could grow and succeed? And we were ultimately persuaded by the very strong presentations that were made by the state, as well as by Austin, that there was a state-wide commitment to excellence...and that there was an understanding that we were at a transition time in this country and moving to take advantage of the whole new world of high technology.

MCC was attracted to Texas by the commitments to accelerate improvements in the universities, to take them to world class status in computer science and electrical engineering. And we were brought by the strong commitment of state and local government that the good business climate which exists would be sustained. But it was particularly the strong private support indication that this state was prepared to provide leadership for the country that told us this was the place—the place to cast our lot.

We'll hope to fulfill the ambitions for MCC, but we will also be counting greatly on you in the years out ahead to ensure that in every measure that leads this state to excellence in education, from kindergarten through graduate school, and in the climate which says business can come and prosper, that MCC working with the state will be able to provide leadership for the country...in keeping us out at the edge of keeping peace and economic prosperity through the rest of this decade.

At the conclusion of Admiral Inman's address, the President presented to the Senate The Honorable Henry Cisneros, Mayor of San Antonio, and The Honorable Ron Mullen, Mayor of Austin.

SENATE BILL 565 WITH HOUSE AMENDMENTS

Senator Washington called S.B. 565 from the President's table for consideration of the House amendments to the bill.

The President laid the bill and the House amendments before the Senate.
Floor Amendment No. 1 - Emmett

Amend S.B. 565 on page 3 by striking:

"Appointments to the board shall be made with due regard to the race, creed, sex, religion and national origin of the appointees and geographical distribution of the members of the board."

And substituting the following:

"Appointments to the board shall be made without regard to the race, creed, sex, religion or national origin of the appointees."

Floor Amendment No. 2 - Ceverha

On page 3, add a new subsection at the end of Section 4, as follows:

“(d) A member or employee of the board may not be an officer, employee, or paid consultant of a trade association in the court reporting industry. A member or employee of the board may not be related within the second degree by affinity or consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the court reporting industry.”

The amendments were read.

Senator Washington moved that the Senate do not concur in the House amendments, but that a Conference Committee be appointed to adjust the differences between the two Houses on the bill.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on S.B. 565 before appointment.

There were no motions offered.

The President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Washington, Chairman; Mauzy, Glasgow, Montford and Parker.

NOTICE OF CONSIDERATION OF EXECUTIVE NOMINATIONS

Senator Howard gave notice that he would tomorrow at the conclusion of Morning Call submit to the Senate for consideration Executive nominations to agencies, boards and commissions of the State.

BILLS AND RESOLUTIONS SIGNED

The President announced the signing in the presence of the Senate, after the caption had been read, the following enrolled bills and resolutions:

S.B. 109
S.B. 295
S.B. 387
S.B. 405
S.B. 436
S.B. 471
S.B. 612
S.B. 973
S.B. 1269
H.C.R. 215
H.C.R. 245
H.C.R. 246
H.B. 2437 (Signed subject to Art. III,
Sec. 49a of the Constitution)

MESSAGE FROM THE HOUSE

House Chamber
May 18, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.C.R. 254, Commending the Salvation Army and declaring June 12, 1983, as Texas Salvation Army Day on the occasion of the dedication of the William Booth Garden Apartments in Waco, Texas.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL 1849 ON SECOND READING

On motion of Senator Montford and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 1849, Relating to fraud in a transaction involving real estate or stock in a corporation or joint stock company.

The bill was read second time.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 1

Amend Section 1, subsection (c) of **H.B. 1849** to read as follows:

“(c) A person who [wilfully] makes a false representation or false promise with actual awareness of the falsity thereof commits [, and a person who knowingly benefits from a false representation or false promise, commit] the fraud described in Subsection (a) of this section and is [are] liable to the person defrauded for exemplary damages [not to exceed twice the amount of actual damages]. Actual awareness may be inferred where objective manifestations indicate that a person acted with actual awareness.”

The amendment was read and was adopted.

Senator Caperton offered the following amendment to the bill:

Floor Amendment No. 2

Amend Section 2, subsection (e) of **H.B. 1849** to read as follows:

“(e) any person who violates the provisions of this section shall be liable to the person defrauded for reasonable and necessary attorney’s fees, expert witness fees, costs for copies of depositions and costs of court.”

The amendment was read and was adopted.

On motion of Senator Montford and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

HOUSE BILL 1849 ON THIRD READING

Senator Montford moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1849** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Glasgow, Washington.

Absent-excused: Harris.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Glasgow asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE SENATE BILL 397 ON THIRD READING

Senator Doggett moved to suspend the regular order of business to take up for consideration at this time on its third reading and final passage:

C.S.S.B. 397, Relating to the regulation of monopolies, contracts, combinations, and conspiracies in restraint of trade or commerce; containing enforcement provisions; enacting Sections 15.10, 15.11, 15.23, 15.24, 15.25, and 15.26 of Chapter 15, Title 2, Business and Commerce Code, as amended; amending Sections 15.01, 15.02, 15.03, 15.04, 15.05, 15.12, 15.13, 15.14, 15.15, 15.16, 15.20, 15.21, and 15.22 of Chapter 15, Title 2, Business and Commerce Code, as amended; repealing Sections 15.06, 15.17, 15.18, 15.19, 15.28, 15.29, 15.30, 15.31, 15.32, 15.33, and 15.34 of Chapter 15, Title 2, Business and Commerce Code; and declaring an emergency.

The motion prevailed by the following vote: Yeas 20, Nays 9.

Yeas: Brooks, Caperton, Doggett, Edwards, Farabee, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Blake, Brown, Glasgow, Henderson, Howard, Jones, Leedom, Sharp, Sims.

Absent: Sarpalius.

Absent-excused: Harris.

The bill was read third time.

Senator Glasgow offered the following amendment to the bill:

Floor Amendment No. 1

Amend the first sentence of Section 15.26 of the floor substitute for **C.S.S.B. 397** at page 49 by adding the words "or petition" after "suit" and by adding "15.10" after "Section", to read as follows:

Whenever any suit or petition is filed in the district court in any county in the State of Texas as provided for in Section 15.10, 15.20, 15.21, or 15.22 of this Act, the court shall have jurisdiction and venue to hear and determine the matter presented and to enter any order or orders required to implement the provisions of this Act.

The amendment was read and was adopted by unanimous consent.

On motion of Senator Doggett and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was finally passed by the following vote: Yeas 20, Nays 9.

Yeas: Brooks, Caperton, Doggett, Edwards, Farabee, Kothmann, Lyon, Mauzy, McFarland, Montford, Parker, Parmer, Santiesteban, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Blake, Brown, Glasgow, Henderson, Howard, Jones, Leedom, Sharp, Sims.

Absent: Sarpalius.

Absent-excused: Harris.

**COMMITTEE SUBSTITUTE HOUSE BILL 2154 ON SECOND
READING**

Senator Lyon asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 2154, Relating to revision of the political funds reporting and disclosure law and to regulation of the ethical conduct of public servants; providing penalties.

There was objection.

Senator Lyon then moved to suspend the regular order of business and take up **C.S.H.B. 2154** for consideration at this time.

The motion prevailed by the following vote: Yeas 20, Nays 10.

Yeas: Blake, Caperton, Doggett, Edwards, Farabee, Glasgow, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parmer, Sarpalius, Sharp, Traeger, Truan, Uribe, Vale.

Nays: Brooks, Brown, Henderson, Mauzy, Parker, Santiesteban, Sims, Washington, Whitmire, Williams.

Absent-excused: Harris.

The bill was read second time.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 1

Amend **C.S.H.B. 2154** as follows:

- (1) On page 9, line 13, after the semicolon strike "or".
- (2) On page 9, line 14, strike the period and substitute ";
- (3) On page 9, between lines 14 and 15, insert new Subdivisions (4) and (5) to read as follows:

(4) to any person from whom contributions were received; or
(5) to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes that is approved by the State Ethics Advisory Commission.

- (4) On page 9, between lines 20 and 21, insert a new Subsection (h) to read as follows:

(h) The amount of contributions disposed of under Subsection (e)(4) of this section may not exceed the aggregate amount received from the person who made the contribution during the last two years that the candidate or officeholder accepted contributions pursuant to this chapter.

The amendment was read.

On motion of Senator Edwards and by unanimous consent, the amendment was withdrawn.

Senator Edwards offered the following amendment to the bill:

Floor Amendment No. 2

- (1) On page 9, line 13, after the semicolon strike "or".
- (2) On page 9, line 14, strike the period and substitute ".".
- (3) On page 9, between lines 14 and 15, insert new Subdivisions (4) and (5) to read as follows:

(4) to any person from whom contributions were received; or
(5) to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes that is approved by the State Ethics Advisory Commission.

- (4) On page 9, between lines 20 and 21, insert a new Subsection (h) to read as follows:

(h) The amount of contributions disposed of under Subsection (e)(4) of this section may not exceed the aggregate amount received from the person who made the contribution during the last two years that the candidate or officeholder accepted contributions pursuant to this chapter.

The amendment was read and was adopted.

Senator Brown offered the following amendment to the bill:

Floor Amendment No. 3

Amend C.S.H.B. 2154 as follows:

- (1) On page 4, between lines 31 and 32 insert a new Subsection (c-1) to read as follows:

(C-1) In addition to the filing of a sworn statement under this section, the information required to be reported on the statement regarding contributions from a person that in the aggregate exceed \$1000 and that are accepted during the period beginning on the ninth day before election day and ending at 12 noon on the second day before election day shall be reported by each candidate and specific-purpose political committee by telegram to the appropriate authority within 48 hours of acceptance.

The amendment was read and was adopted by the following vote: Yeas 21, Nays 9.

Yeas: Blake, Brooks, Brown, Doggett, Henderson, Howard, Jones, Kothmann, Leedom, Mauzy, McFarland, Parmer, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Caperton, Edwards, Farabee, Glasgow, Lyon, Montford, Parker, Santiesteban, Sarpalius.

Absent-excused: Harris.

Senator Leedom offered the following amendment to the bill:

Floor Amendment No. 4

Amend C.S.H.B. 2154 by adding the phrase at the end of Line 5, Page 12 of the Committee Printing as follows:

“; provided that no opinion may be rendered within 120 days of an election.”

The amendment was read and was adopted by the following vote: Yeas 24, Nays 6.

Yeas: Blake, Brooks, Brown, Caperton, Farabee, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, Montford, Parker, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Doggett, Edwards, Glasgow, Mauzy, McFarland, Parmer.

Absent-excused: Harris.

On motion of Senator Lyon and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Sims asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1473 ON SECOND READING

On motion of Senator Traeger and by unanimous consent, the regular order of business and the provisions of the Intent Calendar were suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1473, Relating to the creation or reorganization of certain judicial districts, supplemental compensation of certain district judges, exchange of benches by certain district judges, creation of the office of district attorney in certain judicial districts, duties and election of certain district attorneys, and the juvenile boards of certain counties.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1473 ON THIRD READING

Senator Traeger moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1473** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Harris.

MOTION TO PLACE SENATE BILL 413 ON SECOND READING

Senator Parker asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

S.B. 413, Relating to the right of public employees to designate any portion of their earned income to organizations or agencies of their own choosing.

There was objection.

Senator Parker then moved to suspend the regular order of business and take up **S.B. 413** for consideration at this time.

The motion was lost by the following vote: Yeas 17, Nays 13. (Not receiving two-thirds vote of the Members present)

Yeas: Brooks, Caperton, Doggett, Edwards, Kothmann, Lyon, Mauzy, Montford, Parker, Parmer, Santiesteban, Truan, Uribe, Vale, Washington, Whitmire, Williams.

Nays: Blake, Brown, Farabee, Glasgow, Henderson, Howard, Jones, Leedom, McFarland, Sarpalius, Sharp, Sims, Traeger.

Absent-excused: Harris.

SENATE BILL 1040 ON SECOND READING

On motion of Senator Glasgow and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1040, Relating to agents and agents' licenses; and declaring an emergency.

The bill was read second time.

Senator Glasgow offered the following committee amendment to the bill:

Amend **S.B. 1040** by reinserting in Section 2 the former section 9 and renumbering the subsequent subsections.

The committee amendment was read and was adopted.

On motion of Senator Glasgow and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 1040 ON THIRD READING

Senator Glasgow moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 1040** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 29, Nays 1.

Nays: Washington.

Absent-excused: Harris.

The bill was read third time and was passed by the following vote: Yeas 30, Nays 0.

Absent-excused: Harris.

HOUSE BILL 894 ON SECOND READING

On motion of Senator Jones and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 894, Relating to fees imposed and collected by state agencies.

The bill was read second time.

Senator Jones offered the following amendment to the bill:

Amend **H.B. 894** by adding the following language at the end of Section 2:
This Act does not apply to tuition charged by institutions of higher education.

The amendment was read and was adopted.

On motion of Senator Jones and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTE

Senator Mauzy asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 894 ON THIRD READING

Senator Jones moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that H.B. 894 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 2.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Traeger, Truan, Uribe, Vale, Whitmire, Williams.

Nays: Mauzy, Washington.

Absent-excused: Harris.

The bill was read third time and was passed by the following vote: Yeas 29, Nays 1.

Nays: Mauzy.

Absent-excused: Harris.

HOUSE BILL 634 ON SECOND READING

On motion of Senator Washington and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 634, Relating to a substantive revision of the laws concerning creation, consolidation, and abolition of school districts.

The bill was read second time and was passed to third reading.

RECORD OF VOTES

Senators Brown and Henderson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 382 ON SECOND READING

Senator Caperton asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

C.S.H.B. 382, Relating to the payment by the state of certain expenses arising from the prosecution of an inmate of the department of corrections.

There was objection.

Senator Caperton then moved to suspend the regular order of business and take up C.S.H.B. 382 for consideration at this time.

The motion prevailed by the following vote: Yeas 25, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Howard, Jones, Kothmann, Leedom, Lyon, McFarland, Montford, Parker, Parmer, Santiesteban, Sarpalius, Sharp, Sims, Truan, Uribe, Whitmire, Williams.

Nays: Henderson, Mauzy, Traeger, Vale, Washington.

Absent-excused: Harris.

The bill was read second time.

(Senator Parker in Chair)

Senator Washington offered the following amendment to the bill:

Floor Amendment No. 1

Amend H.B. 382 as follows:

(1) Strike Section 2 and substitute a new Section 2 to read as follows:

SECTION 2. Chapter 2, Code of Criminal Procedure, 1965, is amended by adding Article 2.025 to read as follows:

Art. 2.025. PROSECUTION OF STATE PRISONERS BY ATTORNEY GENERAL. (a) The attorney general shall represent the state in each criminal prosecution for an offense committed while the actor was a prisoner in the custody of the Texas Department of Corrections and in an appeal arising from the prosecution.

(b) The provisions of Articles 2.01 and 2.02 of this code that are inconsistent with this article do not apply to a prosecution or appeal described in this article.

(2) Renumber Sections 3 and 4 as Sections 4 and 5 respectively.

(3) Insert a new Section 3 to read as follows:

SECTION 3. (a) Section 1 of this Act applies only to the reimbursement of expenses incurred by a county on or after the effective date of this Act. Sections (a) and (b) of Article 1036, Code of Criminal Procedure, 1925, as enacted by this Act, do not apply to the reimbursement of expenses incurred in the prosecution of an offense for which the indictment was presented to or the information was filed with the court before the effective date of this Act.

(b) The change in law made by Section 2 of this Act applies only to a prosecution in which the indictment is presented to or the information is filed with the court on or after the effective date of this Act. A prosecution in which the indictment is presented or the information is filed before the effective date of this Act is covered by the law in effect when the indictment was presented or the information was filed, and the former law is continued in effect for that purpose.

The amendment was read.

Senator Caperton moved to table the amendment.

Question - Shall the amendment be tabled?

(Senator McFarland occupied the Chair pending discussion of the amendment)

MESSAGE FROM THE HOUSE

House Chamber
May 18, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

C.S.S.B. 1, Relating to the offenses of driving while intoxicated, driving under the influence of a controlled substance or drug, and involuntary manslaughter involving the use of a motor vehicle. (With amendments)

C.S.S.B. 180, Relating to the continuation, administration, membership, powers and duties, and grounds for removal of members of the Industrial Accident

Board; providing funding and regulations concerning the Compensation to Victims of Crime Fund. (With amendments)

S.B. 578, Relating to the authority of the Board of Regents of the Texas A&M University System to grant, sell, lease, or otherwise dispose of certain Texas A&M University System property.

S.B. 928, Relating to the continuation of the State Board of Insurance and to the regulation of the business of insurance. (With amendments)

S.B. 1152, Relating to the use of firearms by private security officers. (With amendments)

H.B. 2232, Relating to certificates of public necessity of convenience for utilities providing service in certain municipalities in which municipally-owned utilities provide utility service.

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

SENATE RULE 103 SUSPENDED

On motion of Senator Brooks and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Health and Human Resources might consider **H.B. 1732** today.

SENATE RULE 103 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider the following bills today:

H.B. 2345

H.B. 2346

H.B. 2347

H.B. 2359

H.B. 2083

H.B. 1964

S.R. 532

BILLS ADDED TO LOCAL AND UNCONTESTED BILLS CALENDAR

On motion of Senator Blake and by unanimous consent, the following bills were added to the list of bills scheduled to be considered on the Local and Uncontested Bills Calendar tomorrow:

S.B. 1404

C.S.H.B. 2371

BILL ORDERED NOT PRINTED

On motion of Senator Blake and by unanimous consent, the following bill was ordered not printed:

C.S.H.B. 2371

AT EASE

On motion of Senator Sharp, the Senate at 1:03 o'clock p.m. agreed to Stand At Ease until 1:13 o'clock p.m.

IN LEGISLATIVE SESSION

The Presiding Office (Senator McFarland in Chair) called the Senate to order at 1:13 o'clock p.m. as In Legislative Session.

RECESS

On motion of Senator Doggett, the Senate at 1:13 o'clock p.m. took recess until 2:00 o'clock p.m. today.

AFTER RECESS

The Senate met at 2:00 o'clock p.m. and was called to order by the President.

**COMMITTEE SUBSTITUTE HOUSE BILL 382
ON SECOND READING**

The Senate resumed consideration of unfinished business, same being C.S.H.B. 382 on its second reading and passage to third reading, with an amendment by Senator Washington pending.

Question - Shall the amendment be tabled?

CONSIDERATION POSTPONED

On motion of Senator Caperton and by unanimous consent, the Senate agreed to postpone further consideration of C.S.H.B. 382 until the conclusion of Morning Call tomorrow.

SENATE BILL 816 ON SECOND READING

On motion of Senator Brooks and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 816, Relating to the disposition of interest earned on certain funds deposited in the treasury by the State Commission for the Blind.

The bill was read second time and was passed to engrossment.

SENATE BILL 816 ON THIRD READING

Senator Brooks moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 816** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 25, Nays 1.

Nays: Washington.

Absent: Parker, Truan, Uribe, Whitmire.

Absent-excused: Harris.

The bill was read third time and was passed by the following vote: Yeas 26, Nays 0.

Absent: Parker, Truan, Uribe, Whitmire.

Absent-excused: Harris.

SENATE BILL 1342 ON SECOND READING

On motion of Senator Henderson and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 1342, Relating to metropolitan rapid transit authorities; relating to the issuance by such authorities of commercial revenue obligations and the authorized terms and conditions thereof; relating to the general powers of taxation of such authorities; relating to the rules and regulations of such authorities; and declaring an emergency.

The bill was read second time.

Senator Henderson offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend **S.B. 1342** by deleting Section 6 and renumbering all sections thereafter.

The committee amendment was read and was adopted.

Senator Henderson offered the following committee amendment to the bill:

Committee Amendment No. 2

Amend **S.B. 1342** by modifying Section 5, subdivision (i) (2) (i) to read as follows:

(2) (i) After the authority has received authorization for the issuance of sales tax revenue bonds in an election held for that purpose, to issue Commercial Revenue Obligations, as hereinafter defined, in an amount not to exceed such authorization, and to enter into one or more Agreements, as hereinafter defined, which provide for the issuance thereof at once or from time to time and upon and having such terms, conditions and provisions as the authority may approve in order to obtain funds for any of the purposes for which the authority may issue bonds and notes or for the purpose of paying the principal of and interest on Commercial Revenue Obligations previously issued, or for both of such purposes; provided, however, that Commercial Revenue Obligations are not bonds authorized in such election.

The committee amendment was read and was adopted.

Senator Henderson offered the following amendment to the bill:

Floor Amendment No. 1

1. Amend **S.B. 1342** by modifying the first and second paragraphs of Section 3, subdivision (f) to read as follows:

(f) Where the principal city's population exceeds 1,500,000 according to the most recent federal census and the board of an authority has been increased to nine members pursuant to Subsection (b) of this section, the membership of its board is fixed at nine members. Five members shall be appointed by the mayor of the principal city, subject to confirmation by the governing body of the principal city; two members shall be appointed by the commissioners court of the county in which the principal city is located; and two members shall be appointed jointly by the mayors of all incorporated municipalities within the authority except the principal city. The terms of office of the members of the board appointed after the effective date of this Act are two years except as otherwise provided herein. In order to provide staggered terms, the terms of board members serving on the effective date of this Act are terminated as of the effective date of this Act and such board members are hereby reappointed to serve the terms established as follows:

(1) The terms of board members appointed by the principal city for terms of office that commenced on December 16, 1979, or their successors, shall commence on the effective date of this Act and expire April 1, 1984.

(2) The terms of board members appointed by the principal city on February 16, 1982, or their successors, shall commence on the effective date of this Act and expire on April 1, 1984.

(3) The term of the board member appointed by the commissioners court on July 17, 1980, or his successor, shall commence on the effective date of this Act and expires on December 1, 1983.

(4) The term of the board member appointed by the commissioners court on May 20, 1982, or his successor, shall commence on the effective date of this Act and expires on December 1, 1984.

(5) The term of the board member appointed by the mayors of the municipalities on August 14, 1980, or her successor, shall commence on the effective date of this Act and expires on August 1, 1984.

(6) The term of the board member appointed by the mayors of the municipalities on August 13, 1982, or his successor, shall commence on the effective date of this Act and expires August 1, 1983 if such effective date is prior to August 1, 1983. Otherwise, such term shall commence on the effective date of this Act and expires on August 1, 1985.

After the expiration of the terms established in the first paragraph of this subsection, the appointing authorities shall make all subsequent appointments to the board, as follows:

(1) Three members appointed by the principal city are appointed for terms expiring on April 1 of each even-numbered year;

(2) Two members appointed by the principal city are appointed for terms expiring on April 1 of each odd-numbered year; provided that the first such appointments after the effective date of this Act shall be for one-year terms in order to provide staggered terms;

(3) One member appointed by the commissioners court is appointed for a term expiring on December 1 of each even-numbered year;

(4) One member appointed by the commissioners court is appointed for a term expiring on December 1 of each odd-numbered year;

(5) One member appointed by the mayors of the municipalities is appointed for a term expiring on August 1 of each even-numbered year; and

(6) One member appointed by the mayors of the municipalities is appointed for a term expiring on August 1 of each odd-numbered year.

2. Amend S.B. 1342 by deleting Section 5, subdivision (h) and relettering the subdivision thereafter.

The amendment was read and was adopted.

On motion of Senator Henderson and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to engrossment.

SENATE BILL 1342 ON THIRD READING

Senator Henderson moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that S.B. 1342 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 26, Nays 1.

Nays: Washington.

Absent: Parker, Truan, Whitmire.

Absent-excused: Harris.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0.

Absent: Parker, Whitmire.

Absent-excused: Harris.

(Senator Williams in Chair)

SENATE BILL 827 ON SECOND READING

On motion of Senator McFarland and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to engrossment:

S.B. 827, Relating to immunity from certain liability involved in known or suspected fraudulent insurance and reinsurance transactions.

The bill was read second time and was passed to engrossment.

SENATE BILL 827 ON THIRD READING

Senator McFarland moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **S.B. 827** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent: Parker, Whitmire.

Absent-excused: Harris.

The bill was read third time and passed.

HOUSE BILL 872 ON SECOND READING

On motion of Senator Uribe and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

H.B. 872, Relating to the requirements for obtaining a certificate of title to a vehicle that has not been previously registered or titled in any state.

The bill was read second time and was passed to third reading.

HOUSE BILL 872 ON THIRD READING

Senator Uribe moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 872** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent: Parker, Whitmire.

Absent-excused: Harris.

The bill was read third time and was passed.

MOTION TO PLACE COMMITTEE SUBSTITUTE SENATE BILL 672 ON SECOND READING

Senator Traeger moved to suspend the regular order of business to take up for consideration at this time:

C.S.S.B. 672, Relating to regulation of wrecker operators.

The motion was lost by the following vote: Yeas 15, Nays 12. (Not receiving two-thirds vote of the Members present)

Yeas: Brown, Farabee, Howard, Jones, Kothmann, McFarland, Montford, Parmer, Santiesteban, Sharp, Traeger, Uribe, Vale, Washington, Williams.

Nays: Blake, Brooks, Caperton, Doggett, Edwards, Glasgow, Leedom, Lyon, Mauzy, Sims, Truan, Whitmire.

Absent: Henderson, Parker, Sarpalius.

Absent-excused: Harris.

COMMITTEE SUBSTITUTE HOUSE BILL 1618 ON SECOND READING

On motion of Senator Santiesteban and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 1618, Relating to bond requirements for certain alcoholic beverage permittees and licensees.

The bill was read second time and was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 1618 ON THIRD READING

Senator Santiesteban moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **C.S.H.B. 1618** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 28, Nays 1.

Nays: Washington.

Absent: Parker.

Absent-excused: Harris.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Lyon asked to be recorded as voting "Nay" on the final passage of the bill.

MESSAGE FROM THE HOUSE

House Chamber
May 18, 1983

HONORABLE W. P. HOBBY PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has granted the request of the Senate for the appointment of a Conference Committee on **S.B. 232**. House conferees: Bomer, Chairman; Laney, Keller, Turner, Short.

The House has refused to concur in Senate amendments to **H.B. 1473** and has requested the appointment of a Conference Committee to consider the difference between the two Houses. House conferees: Gilley, Chairman; Parker, Bush, Smith of Travis, Stiles.

S.B. 969, Relating to the authority of certain counties to contract for the improvement of highways in the counties and to assess the cost of the improvements to the owners of property benefited by the improvements.

C.S.S.B. 1141, Relating to the regulation of motor vehicle manufacturers, distributors, and sellers of new motor vehicles; to the protection of purchasers of new motor vehicles; to certain related legal actions by consumers. (With amendments)

Respectfully,

BETTY MURRAY, Chief Clerk
House of Representatives

LEAVE OF ABSENCE

Senator Uribe was granted leave of absence for the remainder of today on account of important business on motion of Senator Mauzy.

(Senator Brooks in Chair)

HOUSE BILL 1048 ON SECOND READING

Senator Farabee asked unanimous consent to suspend the regular order of business to take up for consideration at this time:

H.B. 1048, Relating to the punishment of habitual offenders.

There was objection.

Senator Farabee then moved to suspend the regular order of business and take up **H.B. 1048** for consideration at this time.

The motion prevailed by the following vote: Yeas 23, Nays 5.

Yeas: Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Kothmann, Lyon, Mauzy, McFarland, Parker, Parmer, Santiesteban, Traeger, Truan, Vale, Washington, Whitmire, Williams.

Nays: Blake, Leedom, Montford, Sharp, Sims.

Absent: Sarpalius.

Absent-excused: Harris, Uribe.

The bill was read second time.

Senator Farabee offered the following committee amendment to the bill:

Amend **H.B. 1048** on page 1 line 12 to read as follows:

any term of not more than 99 years or less than 25 years.

The committee amendment was read and was adopted.

On motion of Senator Farabee and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

RECORD OF VOTES

Senators Sharp and Henderson asked to be recorded as voting "Nay" on the passage of the bill to third reading.

HOUSE BILL 1048 ON THIRD READING

Senator Farabee moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that **H.B. 1048** be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 21, Nays 5.

Yeas: Blake, Brooks, Brown, Caperton, Doggett, Edwards, Farabee, Glasgow, Henderson, Howard, Jones, Lyon, Mauzy, Montford, Parker, Parmer, Santiesteban, Traeger, Vale, Whitmire, Williams.

Nays: Kothmann, Leedom, Sharp, Sims, Washington.

Absent: McFarland, Sarpalius, Truan.

Absent-excused: Harris, Uribe.

The bill was read third time and was passed.

RECORD OF VOTE

Senator Montford asked to be recorded as voting "Nay" on the final passage of the bill.

COMMITTEE SUBSTITUTE HOUSE BILL 2298 ON SECOND READING

On motion of Senator Vale and by unanimous consent, the regular order of business was suspended to take up for consideration at this time on its second reading and passage to third reading:

C.S.H.B. 2298, Relating to the creation, jurisdiction, terms, administration, practice, and procedure of the Courts at Law Numbers 4, 6, 7, and 8 of Bexar County; providing for the qualifications, appointment, election, power, and salary of the judges and for the necessary officers and employees; providing for transfer of cases and for exchange of judges and courtrooms with other county courts at law; and redesignating certain county courts at law as probate courts.

The bill was read second time.

Senator Vale offered the following amendment to the bill:

Amend **C.S.H.B. 2298** by striking all below the enacting clause and substituting in lieu thereof the following:

SECTION 1. CREATION. The County Courts at Law Numbers 4, 6, 7, and 8 of Bexar County are created.

SECTION 2. JURISDICTION. (a) The courts created by this Act have the same jurisdiction of civil and criminal cases as that of the County Courts at Law Numbers 1, 2, 3, and 5 of Bexar County.

(b) The courts created by this Act do not have jurisdiction over causes and proceedings concerning roads, bridges, and public highways and the general administration of county business that is within the jurisdiction of the commissioners court. The judge of the county court retains and shall exercise all ex officio duties of the county judge.

(c) The courts created by this Act shall give preference to criminal matters and appeals de novo from the municipal and justice courts.

SECTION 3. POWERS AND DUTIES. (a) The courts created by this Act or the judge of a court created by this Act may issue writs of injunction, mandamus, sequestration, attachment, garnishment, certiorari, supersedeas, and all writs necessary for the enforcement of the jurisdiction of the court. They may

issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the court or of any other court of inferior jurisdiction in the county.

(b) The courts created by this Act or the judge of a court created by this Act may punish for contempt as prescribed by general law.

(c) The judge of a court created by this Act has all other powers, duties, immunities, and privileges provided by law for county court judges, except that the judge does not have any authority over the administrative business of the county that is performed by the county judge of the county.

SECTION 4. TERMS OF COURT. The terms of the courts created by this Act begin on the first Mondays in January, March, May, July, September, and November of each year. Each term of court continues until the next succeeding term begins.

SECTION 5. JUDGE. (a) The judge of a court created by this Act must:

- (1) be a citizen of the United States;
- (2) reside in the county;
- (3) be licensed to practice law in this state; and
- (4) have actively practiced law for at least four years prior to election or appointment.

(b) The commissioners court shall fix the annual salary of the judge of a court created by this Act at a sum that is equal to the salary received by the judges of the other county courts at law in the county as provided in Subsection (e) of Section 6 of this Act. The annual salary shall be paid in equal monthly installments from county funds.

(c) The commissioners court shall appoint a person to fill a vacancy in the office of the judge of a court created by this Act. The appointee holds office until the next succeeding general election and until his successor is elected and has qualified.

(d) At the general election in 1986 and every fourth year thereafter, the qualified voters of the county shall elect the judges of the courts created by this Act for regular terms of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution.

(e) The judge of a court created by this Act shall take the oath of office prescribed by the constitution of this state.

SECTION 6. COURT OFFICIALS, PERSONNEL, AND FACILITIES.

(a) The judge of a court created by this Act shall appoint an official court reporter. The reporter must be well-skilled in his profession and have the qualifications prescribed by law for that office. The reporter shall be a sworn officer of the court and serves at the pleasure of the judge. The reporter is entitled to the same compensation, fees, and allowances as the court reporters of the district courts in the county.

(b) The judge of a court created by this Act may appoint a court coordinator or administrative assistant for the court. A court coordinator or administrative assistant performs the duties prescribed by the judge and cooperates with the administrative judges and state agencies for the uniform and efficient operation of the courts and the administration of justice. The court coordinator or administrative assistant is entitled to be paid from county funds the compensation, fees, and allowances that are set by the commissioners court or as otherwise provided by law. This section is cumulative of the provisions of the law that relate to a court administrator's system for county courts with criminal jurisdiction in certain counties.

(c) The criminal district attorney shall attend the courts created by this Act as required by the judges of the courts.

(d) The county clerk serves as the clerk of the courts created by this Act. The county clerk shall appoint a deputy for each county court at law created by this

Act. The deputy shall take the oath of office prescribed by the constitution of this state. The county clerk may require a deputy to furnish bond in an amount, conditioned, and payable as prescribed by law. The deputy shall act in the name of his principal and may perform all official acts that may be performed by the county clerk. The deputy shall attend all sessions of the county court at law to which he is appointed and perform the services in and for the court that are usually performed by the county clerk and his deputies in the county courts of this state. The deputy shall perform any services that may, from time to time, be assigned him by the judge of the court. The deputy shall, in all cases, both civil and criminal, that may be filed in the county court at law to which he is appointed or that may be transferred to that court from another county court at law of Bexar County tax, assess, and collect the same fees and costs and in the same manner as provided by law for the county courts of this state and the judges of those courts in similar cases. The clerk and the clerk's deputies shall deposit or pay all fees and costs received in their official capacity as provided by law. A deputy may act for the deputy of any other county court at law of Bexar County when requested to do so by the judges of the county courts at law of Bexar County. A deputy acting for another deputy is not entitled to receive additional compensation. In the event of a vacancy, the county clerk of Bexar County shall immediately appoint another deputy for the court. The annual salary of the deputy appointed for each of the courts created by this Act is the same as the annual salary of the deputies of the other county courts at law of Bexar County. The salary shall be paid in equal monthly installments out of county funds. Nothing in this section of this Act alters the duties and powers of the county clerk of Bexar County, except as specifically stated.

(e) The judges of the county courts at law of Bexar County, Texas, shall be paid a salary the same as the salaries of the judges of the statutory probate courts.

SECTION 7. SPECIAL JUDGE. (a) If the regular judge of a court created by this Act is absent or is from any cause disabled or disqualified from presiding, a special judge may be appointed or elected in the manner provided by law for special judges of county courts.

(b) A special judge shall take the oath of office that is required by law for the regular judge and has all the power and jurisdiction of the court and of the regular judge for whom he is sitting. A special judge may sign orders, judgments, decrees, or other process of any kind as "Judge Presiding" when acting for the regular judge.

(c) A special judge is entitled to receive for the services actually performed the same amount of compensation that the regular judge is entitled to receive for the services. The compensation shall be paid out of county funds. None of the amount paid to a special judge for sitting for the regular judge may be deducted or paid out of the salary of the regular judge.

(d) Notwithstanding any provisions of this Act to the contrary, the provisions of Section 5, Chapter 686, Acts of the 66th Legislature, Regular Session, 1979 (Article 3883i-3, Vernon's Texas Civil Statutes), relating to judges of the probate courts shall apply to the judges of the county courts at law of Bexar County, Texas.

SECTION 8. SEPARATE DOCKETS. The clerk of a court created by this Act shall keep a separate docket for the court. Cases shall be docketed in the order filed or in any manner as determined by a majority of the judges of the county courts at law of Bexar County and the judge of the county court.

SECTION 9. REPORTER'S FEES. The official court reporter's fee shall be taxed as costs in civil actions in the same manner as that fee is taxed in civil cases in the district courts of this state.

SECTION 10. TRANSFER OF CASES. A judge of a county court at law of Bexar County may transfer with the consent of the judge of the court to which

transfer is to be made civil or criminal actions, matters, and proceedings from his court to any one of the other courts by the entry of an order on the docket of the court. The judge of the county court at law to which a case is transferred has jurisdiction to hear and determine the case and render and enter the necessary and proper orders, decrees, and judgments. A case may not be transferred unless it is within the jurisdiction of the court to which transferred.

SECTION 11. EXCHANGE OF BENCHES. (a) The judges of the county courts at law of Bexar County may exchange benches with each other so that if one is absent, disabled, or disqualified, another may hold court for him without the necessity of transferring the case. A judge may hear all or any part of a case pending in a county court at law and may rule and enter orders on and continue, determine, or render judgment on all or any part of the case without the necessity of transferring it to his own docket. A judge may not sit or act in a case unless it is within the jurisdiction of his court. Each judgment and order shall be entered in the minutes of the court in which the case is pending.

(b) When a case is transferred from one court to another as provided by this section, all processes, writs, bonds, recognizances, or other obligations issued from the transferring court are returnable to the court to which the case is transferred as if originally issued by that court. The obligees in all bonds and recognizances taken in and for a court from which a case is transferred and all witnesses summoned to appear in a court from which a case is transferred are required to appear before the court to which the case is transferred as if originally issued out of the court to which the transfer is made.

SECTION 12. PRACTICE AND PROCEDURE. The practice in the courts created by this Act shall conform to that prescribed by law relating to county courts and county courts at law. Appeals and writs of error may be taken from judgments and orders of the courts created by this Act and from judgments and orders of the judges, in civil and criminal cases, in the same manner as prescribed by law relating to appeals and writs of error from judgments and orders of the county courts and county courts at law. Appeals may be taken from interlocutory orders of the courts created by this Act appointing a receiver, overruling a motion to vacate, or overruling an order appointing a receiver, but the procedure and manner in which appeals from interlocutory orders are taken is governed by the laws relating to appeals from similar orders of the district courts.

SECTION 13. SHERIFF AND DEPUTY SHERIFF. The sheriff of Bexar County or the sheriff's appointed deputy shall attend all sessions of the courts created by this Act. The sheriff shall appoint one deputy for each of the courts. Before assuming his duties, the deputy sheriff shall take the oath of office prescribed by the constitution of this state. The sheriff may require the deputy to furnish bond in an amount, conditioned, and payable as prescribed by law. The deputy shall act in the name of his principal and may perform all official acts that the sheriff may perform. The deputy sheriff shall attend all sessions of the county court at law to which he is appointed and shall perform services in and for the court and for the judge that are usually performed by sheriffs and their deputies in the district and county courts, including the serving of process, subpoenas, warrants, and writs in both civil and criminal cases. The deputy sheriff shall perform the services that the judge assigns to him. The deputy sheriff has the powers, authority, and privileges that the sheriffs and their deputies in this state have. The deputy sheriff shall act for the deputy sheriff of any other county court at law of Bexar County when required to do so by a judge of the courts or by the sheriff. A deputy acting for another is not entitled to receive any additional compensation. The sheriff of Bexar County shall immediately appoint a deputy to fill a vacancy in the office of deputy sheriff for a court created by this Act. The salary of the deputy sheriffs appointed for the courts created by this Act shall be the same as the salaries

of the other deputy sheriffs for the county courts at law of Bexar County. The annual salary shall be paid in equal monthly installments out of county funds. Nothing in this section alters the duties and powers of the sheriff of Bexar County, except as specifically stated.

SECTION 14. SEAL. The seals of the courts created by this Act are the same as provided by law for county courts, except that the seal of the County Court at Law Number 4 of Bexar County shall contain the words "County Court at Law Number 4 of Bexar County, Texas," the seal of the County Court at Law Number 6 of Bexar County shall contain the words "County Court at Law Number 6 of Bexar County, Texas," the seal of the County Court at Law Number 7 of Bexar County shall contain the words "County Court at Law Number 7 of Bexar County, Texas," and the seal of the County Court at Law Number 8 of Bexar County shall contain the words "County Court at Law Number 8 of Bexar County, Texas."

SECTION 15. INITIAL APPOINTMENT OF JUDGE. The commissioners court shall appoint a person to fill each vacancy existing on the creation of the offices of judge. The appointee holds office until the next succeeding general election and until his successor is elected and has qualified.

SECTION 16. REDESIGNATION OF COURTS. The County Court at Law Number 6 of Bexar County, Texas, shall hereafter be called and known as the "Probate Court No. 1 of Bexar County, Texas," and the County Court at Law Number 4 of Bexar County, Texas, shall hereafter be called and known as the "Probate Court No. 2 of Bexar County, Texas."

SECTION 17. PROBATE JURISDICTION. (a) Probate Court No. 1 of Bexar County and Probate Court No. 2 of Bexar County have the general jurisdiction of a probate court within the limits of Bexar County, concurrent with the jurisdiction of the county court in probate matters and proceedings. Each probate court may probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, administrators, and guardians, transact all business relating to deceased persons, hear and determine all matters affecting minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons, lunacy proceedings, and the apprenticing of minors as provided by law.

(b) All those matters filed with the county clerk, regardless of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk alternately in Probate Court No. 1 of Bexar County and Probate Court No. 2 of Bexar County. Every odd-numbered case shall be filed in Probate Court No. 1 of Bexar County and every even-numbered case shall be filed in Probate Court No. 2 of Bexar County. The clerk shall keep separate dockets for each of the courts.

SECTION 18. JURISDICTION RELATING TO MENTAL HEALTH, ALCOHOLISM, AND NARCOTIC ADDICTION. (a) The Probate Court No. 1 of Bexar County and the Probate Court No. 2 of Bexar County have general jurisdiction, concurrent with the jurisdiction of the county court, to hear and determine all actions, cases, matters, or proceedings instituted under:

(1) the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes);

(2) Chapter 411, Acts of the 53rd Legislature, Regular Session, 1953 (Article 5561c, Vernon's Texas Civil Statutes); and

(3) Chapter 543, Acts of the 61st Legislature, Regular Session, 1969 (Article 5561c-1, Vernon's Texas Civil Statutes).

(b) All matters for which the courts have jurisdiction under Subsection (a) of this section filed with the county clerk, regardless of the court or judge to which the matter or proceeding is addressed, shall be filed by the clerk alternately in

Probate Court No. 1 of Bexar County and Probate Court No. 2 of Bexar County. Every odd-numbered case shall be filed with Probate Court No. 1 of Bexar County and every even-numbered case shall be filed with Probate Court No. 2 of Bexar County, but the judges of the statutory probate courts and the county judge may determine another manner for filing cases. The clerk shall keep a separate docket for each court.

SECTION 19. EMINENT DOMAIN JURISDICTION. (a) Probate Court No. 1 of Bexar County and Probate Court No. 2 of Bexar County have eminent domain jurisdiction.

(b) All actions, cases, matters, or proceedings of eminent domain arising under Title 52, Revised Statutes, or under Chapter 186, General Laws, Acts of the 39th Legislature, Regular Session, 1925 (Article 6674n, Vernon's Texas Civil Statutes), shall be filed and docketed in Probate Court No. 1 of Bexar County, and Probate Court No. 2 of Bexar County.

SECTION 20. COUNTY COURT JURISDICTION CONCURRENT. The county court retains its powers and jurisdiction existing on the effective date of this Act and shall exercise its powers and jurisdiction as a probate court with respect to all probate matters and proceedings other than those transferred to or filed in Probate Court No. 1 of Bexar County or Probate Court No. 2 of Bexar County. The county judge is the judge of the County Court of Bexar County and shall exercise all ex officio duties of the county judge of Bexar County, except insofar as those duties are expressly committed by statute to the judge of Probate Court No. 1 of Bexar County or to the judge of Probate Court No. 2 of Bexar County.

SECTION 21. PROBATE COURT NO. 2: GENERAL JURISDICTION. (a) Probate Court No. 2 of Bexar County has the same jurisdiction, powers, and duties, and concurrent jurisdiction, powers, and duties in all civil and criminal actions, proceedings, and matters, original and appellate, over which, by the constitution and general laws of this state, the County Courts at Law Numbers 1, 2, and 3 of Bexar County have jurisdiction, and has concurrent jurisdiction with the district courts in which the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest. Probate Court No. 2 shall give preference and priority to probate matters and proceedings.

(b) The practice in civil and criminal matters in Probate Court No. 2 of Bexar County shall be the same as prescribed by law for county courts. Appeals and writs of error may be taken from judgments and orders of Probate Court No. 2 of Bexar County and from judgments and orders of the judge, in civil and criminal cases, and in the same manner as prescribed by law relating to appeals and writs of error from judgments and orders of the county courts in similar cases. Appeals may be taken from interlocutory orders of Probate Court No. 2 of Bexar County, appointing a receiver, and from orders overruling a motion to vacate or an order appointing a receiver. The procedure and manner in which appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the district courts.

SECTION 22. PRACTICE AND PROCEDURE. The practice and procedure in Probate Courts Nos. 1 and 2 of Bexar County shall be the same as that provided by general law for the county courts. All statutes and rules of court relating to proceedings in the county courts, or to the review of or appeals from county courts, apply to Probate Courts Nos. 1 and 2 of Bexar County.

SECTION 23. POWER OF COURTS. The Probate Courts Nos. 1 and 2 of Bexar County may issue writs of injunction, mandamus, execution, attachment, and all writs and process necessary to the exercise and enforcement of the jurisdiction of the court, and may punish for contempt as provided by general law for county courts.

SECTION 24. TERMS OF COURTS. The Probate Courts Nos. 1 and 2 of Bexar County shall each hold six terms of court each year, beginning on the first Monday in January, March, May, July, September, and November. Each term continues until the business of the court is completed, but a term of court may not continue beyond the date fixed for the beginning of its new term unless an order is entered on the minutes during the term extending the term for a particular cause specified in the order.

SECTION 25. JUDGES. Each judge serves a four-year term. Each judge shall be elected as provided by the constitution and laws of this state for the election of judges of county probate courts. Each judge must be well informed in the laws of this state and must have been a licensed and practicing member of the bar of this state for at least five years. Each judge shall take the oath of office prescribed by the Constitution of Texas, but no bond shall be required of the judge.

SECTION 26. VACANCY. A vacancy in the office of the judge of Probate Court No. 1 of Bexar County or Probate Court No. 2 of Bexar County shall be filled by appointment by the commissioners court. The appointee serves until the next general election and until his successor is elected and has qualified.

SECTION 27. ABSENCE OF JUDGE. In the case of the absence, disqualification, or incapacity of the judge of Probate Court No. 1 of Bexar County or Probate Court No. 2 of Bexar County, the county judge or the judge of the other statutory probate court shall sit and act as judge, and may hear and determine, either in his own courtroom or in the courtroom of the court, any pending matter or proceeding, and enter any order in that matter or proceeding that the judge of the court may enter.

SECTION 28. TRANSFER OF CASES. (a) Each of the judges of the statutory probate courts and the judge of the county court may transfer a case for which the statutory probate courts are given jurisdiction by Section 17 or 18 of this Act to the county court or to a statutory probate court.

(b) Each of the judges of the county courts at law of Bexar County and the judge of Probate Court No. 2 of Bexar County may transfer civil or criminal actions, matters, or proceedings among their courts.

(c) A case may not be transferred without the consent of the judge of the court to which it is transferred.

(d) The judge transferring the case shall enter an order to that effect on the minutes of his court.

(e) The judge of the court to which a case is transferred has the jurisdiction to hear and determine the case and enter the necessary orders, decrees, and judgments as if the case had been originally filed in his court.

(f) Processes are returnable to and may be filed in the court to which transfer is made and are valid and binding as if originally issued out of the court to which transfer is made.

SECTION 29. FEES. The judges of Probate Courts Nos. 1 and 2 of Bexar County shall collect the same fees established by law relating to county judges as to matters within the jurisdiction of the court. The judges shall pay the fees into the county treasury as collected. The judge is entitled to receive an annual salary in the amount fixed as provided by law for probate judges. The salary shall be paid in 12 equal monthly installments.

SECTION 30. COUNTY CLERK. The county clerk serves as the clerk of Probate Courts Nos. 1 and 2 of Bexar County.

SECTION 31. SEAL. The seal of each court shall be the same as provided by law for county courts, except that the seal of Probate Court No. 1 of Bexar County shall contain the words "Probate Court No. 1 of Bexar County, Texas," and the seal of Probate Court No. 2 of Bexar County shall contain the words "Probate Court No. 2 of Bexar County, Texas."

SECTION 32. DEPUTY CLERK. The county clerk of Bexar County shall appoint a deputy clerk for Probate Court No. 1 of Bexar County and a deputy clerk for Probate Court No. 2 of Bexar County. The person appointed to a court must be acceptable to the judge, and the appointment must be confirmed in writing by the judge before the appointment becomes effective. The deputy clerk shall take the oath of office prescribed by the Constitution of Texas. The county clerk may require the deputy clerk to furnish a bond in an amount, conditioned and payable as prescribed by law. The deputy clerk acts in the name of the county clerk and he may perform all official acts that may be lawfully done and performed by the county clerk. The deputy clerk shall attend all sessions of the court to which he is appointed and shall perform services in and for the court as are usually performed by the county clerk and his deputies in and for the county courts. The deputy clerk shall perform any other services that may be assigned him by the judge. The deputy clerk shall tax, assess, and collect fees and costs in the same manner as provided by law for county courts. Fees and costs collected by the county clerk and his deputies, as well as any and all other sums of money received by them in their official capacities, shall be deposited in the proper fund or paid to the proper person entitled to them in the manner prescribed by law. The deputy clerk serves at the pleasure of the judge of the court. The salary of the deputy clerk shall be fixed by the judge but may not exceed the salary paid to the deputies for the county courts at law of Bexar County. The annual salary shall be paid in equal monthly installments as provided by law for the payment of the salaries of the deputies of the county clerk. Nothing in this section changes the duties and powers of the county clerk except as specifically set out.

SECTION 33. SHERIFF. The county sheriff, by and through a deputy, shall attend all sessions of Probate Court No. 1 of Bexar County and Probate Court No. 2 of Bexar County. The sheriff shall appoint one deputy for each of the courts. The person appointed to a court must be acceptable to the judge, and the appointment must be approved and confirmed in writing by the judge before it becomes effective. The appointed deputy sheriff shall take the oath of office prescribed by law. The sheriff may require the deputy to furnish a bond in an amount, conditioned and payable as prescribed by law. The deputy shall perform all official acts that the sheriff may lawfully perform. The deputy sheriff serves at the pleasure of the judge. The deputy shall attend all sessions of the court to which he is appointed and shall perform the services in and for the court, and for the judge, that are usually performed by sheriffs and their deputies in the district and county courts, including the serving of any process, subpoenas, warrants, and writs of any kind, nature, or character, in civil matters and proceedings. The deputy shall perform any other services that may be assigned to him by the judge. The deputy has the same rights, powers, authority, and privileges that the sheriffs and their deputies throughout this state have. The deputy sheriffs of the probate courts and county court may act for each other. The deputies shall act for one another when required to do so by any of the judges or by the sheriff. A deputy acting for another is not entitled to receive any additional compensation. The salary of the deputy sheriff appointed for a court shall be fixed by the judge, but the salary may not exceed the salary paid to the deputy sheriffs for the county courts at law of Bexar County. The annual salary shall be paid in equal monthly installments as provided by law for the payment of the salaries of the deputies of the county sheriff. Nothing in this section changes the duties and powers of the sheriff of Bexar County except as herein specifically provided.

SECTION 34. COURT REPORTER. The judge of Probate Court No. 1 of Bexar County and the judge of Probate Court No. 2 of Bexar County may each appoint an official court reporter. The reporter must be well skilled in his profession. The reporter is a sworn officer of the court and holds his office at the

pleasure of the court. The reporter must have the qualifications prescribed by law for that office. The official reporter is entitled to the same amount of compensation paid to official reporters in the district courts of Bexar County. The reporter's salary shall be paid in the same manner that compensation of official reporters of the district courts of Bexar County is paid.

SECTION 35. ADMINISTRATIVE ASSISTANTS. The judge of Probate Court No. 1 of Bexar County and the judge of Probate Court No. 2 of Bexar County may each appoint an administrative assistant and an auditor to aid him in the performance of his duties. The judge of each court sets the salary of the administrative assistant and the salary of the auditor. The appointment of an administrative assistant and auditor and the salary are evidenced by an order entered in the minutes of each court. The appointment and the amount of salary continue in effect from year to year until changed by order of the judge of the court in which the administrative assistant and auditor serve. The salary of each auditor and assistant shall be paid monthly out of the general fund of Bexar County or out of any other fund available for the purpose.

SECTION 36. CONFORMING AMENDMENT. Sections 1-16, Chapter 170, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-301e.1, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. There is created the "County Court at Law Number 5 of Bexar County, Texas."

Sec. 2. The County Court at Law Number 5 of Bexar County, Texas, have the same jurisdiction, powers, and duties, and concurrent jurisdiction, powers, and duties in all civil and criminal actions, proceedings, and matters, original and appellate, over which by the constitution and general laws of this state, the County Courts at Law Numbers 1, 2, and 3 of Bexar County, have jurisdiction, and has concurrent jurisdiction with the district courts when the matter in controversy exceeds \$500 and does not exceed \$5,000, exclusive of interest, as provided in Chapter 915, Acts of the 62nd Legislature, Regular Session, 1971 (Article 1970a, Vernon's Texas Civil Statutes).

Sec. 3. Civil and criminal actions, matters, and proceedings may be filed in the County Court at Law Number 5 of Bexar County, Texas, in the same manner and under the same conditions, circumstances, and instances as now obtain for the filing of actions, matters, and proceedings, civil and criminal, in the County Courts at Law Numbers 1, 2, and 3 of Bexar County, and all such actions, matters and proceedings shall be docketed in the order in the court in which filed, or in such manner as may be determined by a majority of the judges of the said county courts at law and the County Judge of Bexar County, Texas.

Sec. 4. The clerk of said County Court at Law Number 5 of Bexar County, Texas, shall keep a separate docket for said County Court at Law Number 5 of Bexar County, Texas, the same as is now or may be provided by law for keeping of dockets for the county courts at law of Bexar County, Texas; the clerk shall tax the official court reporter's fee as costs in civil actions in said County Court at Law Number 5 of Bexar County, Texas, in like manner as said fee is taxed in civil cases in the district courts of this state. The judges of the County Courts at Law Numbers 1, 2, 3, and 5 of Bexar County, Texas, and each of them may, with the consent of the judge of the court to which transfer is to be made, transfer civil or criminal actions, matters, and proceedings from his respective court to any one of the other courts by the entry of an order to the effect upon the docket of such court; and the judge of the county court at law to which any such action, matter, or proceeding, civil or criminal, shall have been transferred, shall have jurisdiction to hear and determine said matter or matters and render and enter the necessary and proper orders, decrees, and judgments therein, and in the same manner and with the same force and effect as if such case, action, matter, or proceeding had been originally

filed in said county court at law to which transferred. Provided, however, that no cause, action, matter, case, or proceeding shall be transferred without the consent of the judge of the court to which transferred.

Sec. 5. The judges of the County Courts at Law Numbers 1, 2, 3, and 5 of Bexar County, Texas, may, at any time, exchange benches, and may, at any time, sit and act for and with each other in any civil or criminal case, matter or proceeding now, or hereafter, pending in either of said county courts at law of Bexar County, Texas; and any and all such acts thus performed by the judge of the County Court at Law Number 1 of Bexar County, Texas, or by the judge of the County Court at Law Number 2 of Bexar County, Texas, or by the judge of the County Court at Law Number 3 of Bexar County, Texas, or by the judge of the County Court at Law Number 5 of Bexar County, Texas, shall be valid and binding upon all parties to such cases, matters, and proceedings.

Sec. 6. The practice in said County Court at Law Number 5 of Bexar County, Texas, shall be the same as prescribed by law relating to county courts and county courts at law. Appeals and writs of error may be taken from judgments and orders of said County Court at Law Number 5 of Bexar County, Texas, and from judgments and orders of the judge thereof, in civil and criminal cases, and in the same manner as now is, or may hereafter be, prescribed by law relating to appeals and writs of error from judgments and orders of the county courts and county courts at law throughout this state, and the respective judges thereof, in similar cases. And appeals may also be taken from interlocutory orders of said County Court at Law Number 5 of Bexar County, Texas, appointing a receiver, and also from orders of said County Court at Law Number 5 of Bexar County, Texas, overruling a motion to vacate or an order appointing a receiver; provided, however, that the procedure and manner in which such appeals from interlocutory orders are taken shall be governed by the laws relating to appeals from similar orders of the district courts throughout this state.

Sec. 7. The judge of the County Court at Law Number 5 of Bexar County, Texas, shall appoint an official shorthand reporter for such court, who shall be well-skilled in his profession and shall be a sworn officer of the court, and shall hold his office at the pleasure of the court and all of the provisions of Chapter 13, Title 42, Revised Statutes, and as the same may hereafter be amended and all other provisions of the law relating to "official court reporters" shall, and the same are hereby made to, apply in all its provisions, insofar as they are applicable to the official shorthand reporter herein authorized to be appointed, and insofar as they are not inconsistent with the provisions of this Act, and such official shorthand reporter shall be entitled to the same compensation as applicable to official shorthand reporters in the district courts of Bexar County, Texas, and paid in the same manner that compensation of official shorthand reporters of said district court of Bexar County is paid.

Sec. 8. The county clerk of Bexar County, Texas, shall be the clerk of the County Court at Law Number 5 of Bexar County, Texas, in addition to his duties as they are now, or may hereafter be, prescribed by law. The seal of said court shall be the same as provided by law for county courts, except that the seal of the County Court at Law Number 5 of Bexar County, Texas, shall contain the words "County Court at Law Number 5 of Bexar County, Texas." The county clerk of Bexar County, Texas, shall, upon taking effect of this Act, or as soon thereafter as may be possible, appoint a deputy for said County Court at Law Number 5 of Bexar County, Texas. Said deputy so appointed shall take the oath of office prescribed by the Constitution of Texas, and the county clerk of Bexar County, Texas, shall have power and authority to require said deputy to furnish bond in such amount, conditioned and payable as may be prescribed by law. Said deputy shall act in the name of his principal and he may do and perform all such official acts as may be

lawfully done and performed by said county clerk of Bexar County in person; it shall be the duty of said deputy to attend all sessions of said county court at law to which he is appointed and perform such services in and for said court as are usually performed by the county clerk and his deputies of the several county courts of this state; and said deputy shall also perform any and all other services that may, from time to time, be assigned him by the judge of said court. Said deputy shall, in all cases, both civil and criminal, that may be filed in said county court at law to which he is appointed, or that may be transferred to said court from another county court at law of Bexar County, Texas, tax and assess and collect the same fees and costs, and in the same manner, as now provided by law for the county courts of this state and the judges thereof in similar cases; and all such fees and costs, when collected by said county clerk and his deputy, as well as any and all other sums of money received by said county clerk and his deputy in their official capacity, shall by said clerk and his deputy be deposited in such fund, or paid to the proper person or persons entitled to the same, and in the manner as may be provided by law. The deputy appointed hereunder is hereby authorized to act for the deputy of any other county court at law of Bexar County, Texas, and each and all of said deputies shall be, and they are hereby, authorized to act for each other, in any matter pertaining to the clerical business of said court, and it shall be the duty of said deputies to thus act for one another when requested to do so by the judges of the several county courts at law of Bexar County, but they shall receive no additional compensation for so serving. In the event of a vacancy caused by any reason whatsoever, the county clerk of Bexar County, Texas, shall immediately appoint another deputy for said court. The salary of the deputy appointed for said County Court at Law Number 5 of Bexar County, Texas, shall be determined and fixed as prescribed by law for the deputies of the several county courts at law of Bexar County, but shall not exceed the salary now being paid to, or that in the future may be paid to, the deputies for the County Courts at Law Numbers 1, 2, and 3 of Bexar County, Texas; said annual salary to be paid to said deputy in equal monthly installments out of such fund of Bexar County, Texas, as provided by law for the payment of the salaries of the several deputies of the county clerk of Bexar County, Texas, and such payment of said salary shall be made in the manner provided by law. Provided, that nothing contained in this section of this Act is intended to change or alter the duties and powers that have heretofore been and are now being exercised by the county clerk of Bexar County, Texas, except as herein specifically and expressly stated.

Sec. 9. The Sheriff of Bexar County, Texas, shall, by and through a deputy to be appointed as hereinafter provided, attend all sessions of said County Court at Law Number 5 of Bexar County, Texas, and said sheriff shall appoint the deputy. The deputy sheriff so appointed shall, before assuming his duties, take the oath of office prescribed by the Constitution of Texas, and the Sheriff of Bexar County, Texas, shall have the power and authority to require said deputy to furnish bond in such amount, conditioned and payable as may be prescribed by law. Said deputy shall act in the name of his principal and he may do and perform all such official acts as may be lawfully done and performed by the Sheriff of Bexar County, Texas, in person. It shall be the duty of the deputy sheriff appointed as herein provided, to attend all sessions of said county court at law to which he is appointed, and also perform and render such services in and for said court, and for the judge thereof, as are usually and generally performed and rendered by sheriffs and their deputies in and about the several district and county courts of this state, and including the serving of any and all process, subpoenas, warrants, and writs of any and all kinds, nature, and character, in both civil and criminal cases, matters, and proceedings; and it shall be the duty of said deputy sheriff to also perform and render any and all other services that may, from time to time, be assigned to him,

by the judge of said court. Said deputy sheriff shall have, possess and enjoy the same rights, powers, authority, and privileges that the sheriffs and their deputies throughout this state now or may hereafter have, possess and enjoy; and said deputy sheriff is authorized and empowered to act for the deputy sheriff of any other county court at law of Bexar County, Texas, and all of said deputy sheriffs may, and they are hereby authorized and empowered to, act for one another, and it shall be their duty to act for one another when required to do so by either of the judges of said courts or by said sheriff; but said deputy thus acting for another shall not be entitled to receive, nor shall they receive, any additional compensation. The Sheriff of Bexar County, Texas, shall, in the event of a vacancy caused by any reason whatsoever, immediately appoint another deputy for such court. The salary of the deputy sheriff appointed for said County Court at Law Number 5 of Bexar County, Texas, shall be determined and fixed as prescribed by law for the deputy sheriffs for the several county courts at law of Bexar County, but shall not exceed the salary now being paid to, or that in the future may be paid to, the deputy sheriffs for the County Courts at Law Numbers 1, 2, and 3 of Bexar County, Texas; and said annual salary shall be paid to such deputy sheriff in equal monthly installments out of such fund of Bexar County, Texas, as provided by law for the payment of the salaries of the several deputies of the Sheriff of Bexar County, Texas, and such payment of said salary shall be made in the manner provided by law. Provided, that nothing contained in this section of this Act is intended to change or alter the deputies and powers of the Sheriff of Bexar County, Texas, except as herein specifically and expressly provided.

Sec. 10. The judge of the County Court at Law Number 5 of Bexar County, Texas, shall be elected at the general election at which county court at law judges are regularly elected by the qualified voters of Bexar County for a term of four years as provided by Article V, Section 30, and Article XVI, Section 65, of the Texas Constitution. The judge shall hold office until his successor shall have been elected and qualified. He shall have been a duly licensed and practicing member of the bar of this state for at least four years; he shall take the oath of office prescribed by the Constitution of Texas, but no bond shall be required of such judge. The judge of the County Court at Law Number 5 of Bexar County, Texas, shall receive and shall be paid the same salary as is now, or as may hereafter be, prescribed by law for the judges of the several county courts at law of Bexar County, Texas, in equal monthly installments out of the General Fund of Bexar County, Texas, by warrants drawn on the county treasurer of said county upon orders of the Commissioners Court of Bexar County.

Sec. 11. Any vacancy in the office of the judge of the County Court at Law Number 5 of Bexar County, Texas, shall be filled by appointment made by the Commissioners Court of Bexar County, and the judge so appointed shall serve until January 1 following the next general election and until his successor shall be duly elected and qualified.

Sec. 12. A special judge may be appointed or elected for the County Court at Law Number 5 of Bexar County, Texas, in the same manner as may now or hereafter be provided by the general laws of this state relating to the appointment and election of a special judge, or judges, of the several district and county courts and county courts at law of this state; and every such special judge thus appointed or elected for said court shall receive for the services he may actually perform as such special judge the same amount of pay which the regular judge of said court would be entitled to receive for such services; and said amount to be paid to such special judge shall be paid out of the General Fund of Bexar County, Texas, by warrants drawn upon the county treasury of said county upon orders of the Commissioners Court of Bexar County, Texas; but no part of the amount paid to any special judge shall be deducted from or paid out of the salary of the regular judge of said County Court at Law Number 5 of Bexar County, Texas.

Sec. 13. The County Court at Law Number 5 of Bexar County, Texas, or the judge thereof, shall have power to grant all writs necessary to the enforcement of the jurisdiction of said court, and to issue writs of habeas corpus in such cases where the offense charged is within the jurisdiction of said court, or of any other court in said county of inferior jurisdiction.

Sec. 14. The County Court at Law Number 5 of Bexar County, Texas, shall hold six terms of court each year, commencing on the first Monday in January, March, May, July, September, and November of each year and each term shall continue until the business of said court shall have been disposed of; provided, however, that no term of said court shall continue beyond the date fixed for the commencement of its new term, except upon an order entered on its minutes during the term extending the term for any particular causes therein specified.

Sec. 15. For the purpose of disposing of the business of said County Court at Law Number 5 of Bexar County, Texas, there shall be appointed by the Criminal District Attorney of Bexar County, Texas, in addition to the assistants now provided by law, one assistant for the County Court at Law Number 5 of Bexar County, Texas, for the purpose of conducting the duties of his office in said court. Said assistant shall be paid the same salary as is now, or may be hereafter, paid to the assistants serving in County Courts at Law Numbers 1, 2, and 3 of Bexar County, the same to be paid in equal monthly installments, by said county, upon warrants drawn against the General Fund by orders of the commissioners court.

SECTION 37. JUDGES SERVING IN REDESIGNATED COURTS.

(a) The judge of the County Court at Law Number 6 of Bexar County is the judge of Probate Court No. 1 of Bexar County. The judge serves until December 31, 1986, and until his successor is elected and has qualified.

(b) The judge of the County Court at Law Number 4 of Bexar County is the judge of Probate Court No. 2 of Bexar County. The judge serves until December 31, 1986, and until his successor is elected and has qualified.

SECTION 38. TRANSFER OF PENDING CASES. (a) Any other matters pending in County Court at Law Number 6 of Bexar County shall be transferred to County Courts at Law Numbers 1, 2, 3, 4, 5, 6, 7, and 8. The primary objective in transferring these matters shall be equalization of the case loads.

(b) All matters pending in County Court at Law Number 4 of Bexar County on the first day of the initial term of Probate Court No. 2 that are in the jurisdiction of the Probate Court No. 2 of Bexar County shall be transferred to that court.

(c) All processes, writs, bonds, recognizances, or other obligations issued or made in a case transferred under this section shall be returned to and filed in the court to which the transfer is made. Bonds executed and recognizances entered into in those cases bind the parties for their appearance or to fulfill the obligations of the bonds or recognizances and are valid as if issued out of the court to which the case is transferred.

SECTION 39. REPEAL. The following are repealed:

(1) Chapter 114, Acts of the 58th Legislature, Regular Session, 1963 (Article 1970-301f, Vernon's Texas Civil Statutes); and

(2) Section 17, Chapter 170, Acts of the 63rd Legislature, Regular Session, 1973 (Article 1970-301f.1, Vernon's Texas Civil Statutes).

SECTION 40. This Act takes effect September 1, 1983.

SECTION 41. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

The amendment was read and was adopted.

On motion of Senator Vale and by unanimous consent, the caption was amended to conform to the body of the bill as amended.

The bill as amended was passed to third reading.

COMMITTEE SUBSTITUTE HOUSE BILL 2298 ON THIRD READING

Senator Vale moved that the Constitutional Rule and Senate Rule 68 requiring bills to be read on three several days be suspended and that C.S.H.B. 2298 be placed on its third reading and final passage.

The motion prevailed by the following vote: Yeas 27, Nays 1.

Nays: Washington.

Absent: Sarpalius.

Absent-excused: Harris, Uribe.

The bill was read third time and was passed by the following vote: Yeas 28, Nays 0.

Absent: Sarpalius.

Absent-excused: Harris, Uribe.

SENATE RULE 103 SUSPENDED

On motion of Senator Santiesteban and by unanimous consent, Senate Rule 103 was suspended in order that the Committee on Natural Resources might consider H.B. 2323 today.

WELCOME AND CONGRATULATORY RESOLUTIONS

H.C.R. 254 - (Edwards): Declaring June 12, 1983, as Texas Salvation Army Day.

S.R. 632 - By Henderson: Extending congratulations to the James E. Taylor High School concert and symphonic bands.

S.R. 633 - By Lyon: Extending congratulations to Mother Frances Hospital in Tyler.

S.R. 635 - By Sharp: Extending welcome to Paula Ohlendorf, Honorary Page for the Day.

S.R. 636 - By Sharp: Extending congratulations to Christi Wiser, Honorary Page for the Day.

S.R. 637 - By Sims: Extending congratulations to the FFA Judging team members from Fredericksburg.

S.R. 638 - By Montford: Commending J. Weldon Bennett.

RECESS

On motion of Senator Mauzy, the Senate at 3:02 o'clock p.m. took recess until 8:00 o'clock a.m. tomorrow.

APPENDIX

Sent to Governor
(May 18, 1983)

S.C.R. 6
S.C.R. 38

S.B. 971
S.B. 996

S.C.R. 58	S.B. 1018
S.C.R. 97	S.B. 1020
S.C.R. 103	S.B. 1029
S.B. 38	S.B. 1031
S.B. 59	S.B. 1032
S.B. 91	S.B. 1064
S.B. 162	S.B. 1096
S.B. 274	S.B. 1198
S.B. 280	S.B. 1207
S.B. 284	S.B. 1222
S.B. 335	S.B. 1275
S.B. 353	S.B. 1285
S.B. 379	S.B. 109
S.B. 541	S.B. 295
S.B. 544	S.B. 387
S.B. 579	S.B. 405
S.B. 613	S.B. 436
S.B. 732	S.B. 471
S.B. 781	S.B. 612
S.B. 786	S.B. 973
S.B. 809	S.B. 1269
S.B. 967	

SEVENTIETH DAY

(Continued)

(Thursday, May 19, 1983)

AFTER RECESS

The Senate met at 8:00 o'clock a.m. and was called to order by Senator Blake.

LOCAL AND UNCONTESTED BILLS CALENDAR

The Presiding Officer (Senator Blake in Chair) announced that the time had arrived for the consideration of the Local and Uncontested Bills Calendar.

On motion of Senator Mauzy and by unanimous consent, the regular order of business was suspended on the bills and resolutions on the Local and Uncontested Bills Calendar so they could be considered on second reading in the order they are listed on the Calendar.

After suspending the regular order by unanimous consent, the following bills were laid before the Senate, read second time, amended where applicable, passed to engrossment/third reading, read third time and passed: (Sponsor, vote on Constitutional Three-Day Rule and final passage indicated after caption of each bill)

S.B. 324 (Howard) Creating offenses involving the unauthorized use of the insignia and name of certain State law enforcement agencies. (28-1) Washington "Nay" (29-0)

S.B. 621 (Parker) Relating to the continuance of public hearings. (28-1) Washington "Nay" (29-0)

S.B. 626 (Glasgow) Relating to a defendant's election of the judge or the jury to assess punishment in a criminal case. (28-1) Washington "Nay" (29-0)